

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1550

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 74-1550

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
-against-
CARMINE TRAMUNTI, et al.,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DEFENDANTS-APPELLANTS' JOINT APPENDIX
Vol. T(9) - Pages 1054 to 1287



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2 UNITED STATES OF AMERICA
3 vs.
4 CARMINE TRAMUNTI, et al.

73 Cr. 1099

5 New York, February 7, 1974;
6 10.00 A.M.

7 Trial resumed.
8 - -

9 (Jury not present.)

10 THE COURT: All right. Mr. Fisher has sub-
11 poenaed one of the assistant district attorneys. I
12 understand you want to ask him about some 3500 material?

13 MR. FISHER: Yes, your Honor.

14 THE COURT: I firmly believe you have no such
15 right to do it.

16 MR. FISHER: I am sorry --

17 THE COURT: I say, I firmly believe you have no
18 right to do it. However, rather than cause any delay
19 in the trial, I would assume that this can be done in about
20 five minutes --

21 MR. FISHER: Yes, your Honor.

22 THE COURT: All right. Do you want to call
23 him?

24 MR. FISHER: Yes. Mr. Miller.
25

RICHARD A. MILLER, called as a witness
on behalf of the defendants, being first duly
sworn, testified as follows:

THE WITNESS: I am Assistant District Attorney
of the County of New York.

DIRECT EXAMINATION

BY MR. FISHER:

Q Mr. Miller, were you similarly employed on
November 14, 1972?

A Yes; I was.

Q And were you working at that time for any
special area within the District Attorney's office?

A I worked for the office of Frank Rogers, which
is the office of prosecution for the Special Narcotics
Courts.

Q And Mr. Rogers was your immediate superior?

A That's correct.

Q Do you know a man named John Barnaba?

A Yes; I do.

Q And did you have occasion to meet with him on
November 14, 1972?

A I believe I did. I could take a look at my
notes.

Q Would you, please?

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A That's correct.

Q And was that the first debriefing of Mr. Barnaba by your office?

A Yes; it was.

Q And was that done on tape? Was there a tape recorder present?

A Yes; there was.

Q And a tape was made designated A-274?

A I believe that's the number.

Q Which has been turned over to Mr. Phillips and Mr. Curran?

A I believe that's correct.

Q Now, sir, were there additional debriefing sessions of Mr. Barnaba by members of your office?

A I spoke to John Barnaba on several other occasions when I was preparing for the grand jury.

Q Do you remember the dates?

A I have them listed, yes.

Q May we know those dates, sir?

A I saw John Barnaba on the 20th of November of 1972; on April 24, 1973; May 28th of 1973 and May 29th.

Q With regard to November 20, 1972, was a tape recorder present when you spoke to Mr. Barnaba?

A No.

1 Q Now, was there a procedure in your office
2
3 indicating that tape recordings normally be made during
4 debriefings of informants?

5 A No.

6 Q Did you make any handwritten notes during the
7 debriefing of the 20th?

8 A No.

9 Q Did anyone in your presence make handwritten
10 notes during the debriefing on the 20th?

11 A It was not a debriefing as such. I spoke --

12 Q The conversation?

13 A No.

14 Q Who else was present on that day?

15 A I believe Sergeant O'Boyle and Detective Wysocki
16 and one or two other officers; but I don't remember off-
17 hand.

18 Q Do you remember whether or not anyone sub-
19 sequent to the conversation made notes purporting to record
20 the substance of the conversation on November 20, 1972?

21 A No one to my knowledge made any notes with
22 respect to that. I have an entry in a book with respect
23 to the conversation taking place.

24 Q Now, with regard to April 24, 1973, again there
25 was no tape recording made; is that right?

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Miller-direct

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A There was no tape recording except on the first occasion.

Q Ever?

A When I was present, and I don't know of any other.

Q Now, on April 24, 1973, can you tell us who else was present?

A There was an investigator from our office by the name of Anthony Procini, myself and Mr. Barnaba, and, to the best of my recollection, there was also an undercover officer who was there.

Q And was Sergeant O'Boyle there?

A I'm really not sure, no.

Q With regard to May 28th and May 29th, can you tell us who was present?

A Mr. Barnaba, a police officer by the name of Frank Connally and myself.

Q Was Mr. O'Boyle present?

A No.

Q He was not?

A Definitely not.

Q Now, with regard to the conversations with Mr. Barnaba of April 24th, May 28th and May 29th of 1973, did you, sir, make any notes or memoranda regarding the substance of the conversation at any time?

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Miller-direct

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A Yes; I did.

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Q Do you have those notes with you?

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A Yes; I do.

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MR. FISHER: May they be marked, if your Honor please, and turned over to the defendant?

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MR. CURRAN: Objection, your Honor. There is no foundation for that.

9

MR. FISHER: All right.

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Q With regard to conversations of April 24, 1973, May 28th and May 29th of 1973, was the substance of your conversation at least in part relating to Mr. Barnaba's activities, past and present, with Louis Inglese?

14

A Was it recorded?

15

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Q No. The conversation itself, sir: did that deal at all with Louis Inglese?

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A Yes. We talked about him. I don't remember on which day, but I'm sure it was one of those days.

19

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MR. FISHER: I would renew the request, your Honor.

21

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MR. CURRAN: Your Honor, I object on the same grounds.

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THE COURT: Well, we certainly don't have a foundation for it. However, I am directing that those notes be turned over not to the defendants but to me.

All right.

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Miller-direct

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Q Mr. Miller, in the course of these notes that you made, were they made simultaneously or shortly after the conversation?

A On each occasion they were made afterwards.

Q Shortly afterwards?

A The same day.

Q While your recollection was fairly sharp with regard to the previous conversation?

A Yes.

Q And in substance you were endeavoring in your notes to record what happened or what was said during the conversation?

A In general, yes. My notes -- if I can just explain for one moment --

Q Please do.

A The notes that I am referring to are notes that I made every day in my memo book with respect to what I do and whom I see. So it's not a detailed summary. It's just a general statement of what happened during a period of time.

Q Do these notes also reflect at least a general statement of what was discussed?

A Yes, on one or two of the occasions I did that.

Q All right. Now, you would not know of your own knowledge, would you, whether or not Mr. Barnaba was further debriefed.

Let me ask it straight out. I am so used to cross examining.

Do you know of your own personal knowledge whether or not Mr. Barnaba had been debriefed or interviewed by police agents working in this investigation at times other than those that we have just referred to?

A Well, I would hope that during the time --

THE COURT: You started off saying "I hope."

THE WITNESS: Yes, your Honor.

A Let me put it this way: I am sure that between November, the time of his arrest and the present time, that at least a dozen police officers who worked on the investigation talked to him on many occasions about what he did and didn't do. So I have to say I assume he was debriefed, if you want to call it that.

Q And you would not know, then, of your own personal knowledge whether or not such debriefings which you assume occurred would have been tape recorded?

A To my knowledge, none of those debriefings were recorded.

Q Have you asked the police officers involved?

1 A Not specifically, but I would have known about
2 it right now.

3 Q But you haven't asked any police officers speci-
4 fically about whether or not they were recorded, is that
5 right?
6

7 A Within the last week I asked one of the offi-
8 cers whom I happened to run into in court the other day
9 whether or not there were any recordings. He told me
10 there weren't.

11 Q And what was the name of that officer?
12 What's the name of that officer?

13 A That was Frank Connally.

14 Q And did you ask any of these officers whether
15 or not memoranda or notes were made with regard to the
16 substance of such conversations or interviews or de-
17 briefings?

18 A No, I did not.

19 Q And do you know whether or not such interviews
20 or debriefings, whether or not notes were made of those?

21 A No, I do not.

22 Q Are you aware of the fact, sir -- or did
23 these officers and your office use a Kel or Fargo or
24 some sort of transmitting or recording device on the body
25 of Mr. Barnaba from time to time?

MR. CURRAN: Objection.

THE COURT: Sustained.

MR. FISHER: Your Honor, the offer here would be that in fact if there were tape recordings with the use of the Kel device during the aspects of Mr. Barnaba's assistance to the government that would fall within 3500, and I am just trying to establish -- I realize I would have to show a connection between the use and this case, but first I would have to know whether or not there was any use at all.

THE COURT: I gather Mr. Barnaba was involved not only in this case but other cases.

MR. FISHER: That may be, your Honor.

THE COURT: Right now we are off on a really wild fishing expedition.

MR. FISHER: Your Honor, if such tapes exist they fall within the meaning of Section 3500.

MR. CURRAN: Your Honor, by any reading of the Section 3500 they do not.

THE COURT: My ruling stands.

Q Do you have any records reflecting the use of a Kel transmitter or Fargo device by Mr. Barnaba during the period between November 14, 1972 and the present?

THE COURT: I assume there's the same objec-

tion and the same ruling.

MR. CURRAN: Yes, your Hono.

MR. FISHER: Your Honor, I would also submit that we are entitled to this under Brady v. Maryland and the companion and subsequent cases.

THE COURT: Mr. Fisher, what you are suggesting is that these matters have not been turned over to you by the government.

MR. FISHER: I am suggesting --

THE COURT: We have had already a representation by the United States Attorney's Office that they have turned over everything that they have. They have gone back and checked on it and I don't know how much more you want. This is way outside the scope of what I was going to permit. Since Mr. Miller came, I have permitted this semi-hearing, but you know there's a point where the fishing stops.

MR. FISHER: If your Honor please, may I respond to that? First of all the government's representations are based upon what it has learned from Mr. Miller or associates in his office. Mr. Phillips has come to this court before and represented that all the tapes he has have been turned over and then just on the eve of the witness Stasi being called we got about 12 more.

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2 Now, I am not laying any specific blame at the
3 feet of Mr. Phillips at this time, but it seems clear,
4 your Honor, that there is some sort of communication gap
5 or there has been, and in view of that I think we ought
6 to clear the air right here very quickly and very easily.

7 THE COURT: Fine, let me do it.

8 Assistant District Attorney Miller, do you
9 have in your possession or under your control any tape
10 recordings which pertain to this case which have not been
11 turned over to the United States attorney?

12 THE WITNESS: I don't think I can really
13 answer what pertains to this case. I'm not familiar
14 with the entire case.

15 THE COURT: The United States attorney
16 did request from you certain tapes and other material,
17 is that correct?

18 THE WITNESS: Yes, he did, your Honor.

19 THE COURT: And did he delineate the type
20 of thing he considered necessary?

21 THE WITNESS: Yes, he did.
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Miller-direct

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THE COURT: Was all of that matter turned over?

THE WITNESS: Yes. To my knowledge, everything was turned over that Mr. Curran's office asked for.

THE COURT: Mr. Phillips, everything that you have has been turned over to the defense, is that correct?

MR. PHILLIPS: Either to the defense or to your Honor.

THE COURT: All right.

MR. FISHER: May I make this suggestion, your Honor?

THE COURT: Sure.

MR. FISHER: Perhaps efforts were made. In other words, what Mr. Phillips has turned over he says are recordings that were actually made. Suppose a Kel device was used and a recording wasn't made. It may not have been made because the instrument malfunctioned or it may not have been made because Mr. Barnaba tried to elicit inculpatory conversation with one or more of the defendants and saw he couldn't and wasn't getting that kind of a conversation and deliberately turned off the machine or the transmitter.

Now, I think under Brady, your Honor, we would be entitled to know that and I just want to know if

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there are any records in Mr. Miller's office or if he has access to them as to when a Kel device was installed upon Mr. Barnaba.

I should add this, your Honor: as an offer, I am advised that there are such records and that before a Kel transmitter may be used certain procedures involving filings on paper are employed.

MR. CURRAN: Your Honor, I don't know on what theory Mr. Fisher is now moving, but I do know that we have turned over to the defense certain recorded material -- part of it involves his client -- weeks ago between Mr. Barnaba and Finnegan, between Barnaba and Mr. Inglese, and there is no such other material.

I have questioned carefully Mr. Miller and Mr. Rogers on this subject. We have no other material. We have asked, we have checked, and I really don't know where Mr. Fisher now wants to go.

THE COURT: I don't either.

MR. FISHER: Just very briefly I would like to know, as I said, your Honor, whether or not there are any records indicating when and if a Kel or similar transmitting device was placed on Mr. Barnaba.

THE COURT: It is clear that that is not 3500 material. I don't understand how in the world

1 jha Miller-direct 1068

2 it could be Brady material either.

3 MR. FISHER: I will agree it is not 3500
4 material if only an effort was made and no tape was
5 produced, but I would submit urgently, your Honor,
6 that it is in fact Brady material.

7 Certainly I can't understand what the govern-
8 ment's reluctance is in us having this information.
9 If it is not going to help us why are they anxious to
10 keep us from getting it?

11 THE COURT: No, no. Wait a second.

12 MR. CURRAN: Your Honor, as the defense
13 well knows --

14 THE COURT: Wait a second.

15 VOICE: Your Honor, I want to --

16 THE COURT: Sit down. -- Sit down now.

17 MR. CURRAN: As the defense well knows,
18 your Honor, the witness Barnaba, as has been testified,
19 worked with Mr. Miller's office over a period of time.
20 The issue is not whether anything was ever recorded by
21 him in connection with any case. The issue is a much
22 more narrow one.

23 Mr. Fisher is asking a sweeping question about
24 Kel devices and recordings with no relation to this
25 case whatsoever, and then he asserts it is Brady material

2 with no support whatsoever in any record.

3 THE COURT: Thank you. I am aware of it.

4 MR. FISHER: May I have one moment, your
5 Honor?

6 THE COURT: Sure.

7 MR. RICHMAN: If the court please, on this
8 particular issue, I represent two co-conspirators in this
9 case, Frank and Alfred Lalli, in a case scheduled to go
10 on right after this one is completed. There are
11 tapes with reference to Mr. Barnaba on that matter, Mr.
12 Barnaba discussing with these co-conspirators facts
13 concerning persons in this case. They were turned over
14 to me with relation to the other matter, your Honor.
15 They were ~~not~~ turned over to other counsel in this case.

16 MR. FISHER: I might add, your Honor --

17 THE COURT: Wait a second. You say you
18 have possession of tapes?

19 MR. RICHMAN: Ten hours of tapes, your
20 Honor.

21 THE COURT: Ten hours of tapes that refer
22 to this case and these defendants but were not turned
23 over?

24 MR. RICHMAN: No. Not turned over to
25 other counsel.

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Miller-direct

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2 MR. FISHER: They were not turned over to
3 anyone in this case, your Honor. They were turned over
4 to Mr. Richman at a prior proceeding.

5 THE COURT: I heard what he said.

6 MR. RICHMAN: In addition to that, your
7 Honor, I happen to represent other persons in the state
8 court and received 22 hours worth of tapes from Mr. Miller
9 or his office last week by Mr. Barnaba also involving
10 persons in this case, making reference to persons in this
11 case, specifically, Mr. Inglese.

12 MRS. ROSNER: Your Honor, I would like the
13 record to reflect that before this moment I had no
14 knowledge that such tapes existed and I move for their
15 production.

16 MR. CURRAN: Your Honor, the government's
17 position is that the tapes that have just been referred
18 to by defense counsel clearly do not come within the
19 provisions of Section 3500. They do not relate in any
20 way to the witness' direct testimony.

21 THE COURT: All right. Mr. Richman, you
22 have these tapes, right?

23 MR. RICHMAN: Yes, your Honor.

24 THE COURT: Give them to me.

25 MR. RICHMAN: I am having them transcribed.

2 I don't have them with me right now. I will have them
3 this afternoon or tomorrow.

4 THE COURT: As soon as you have them give
5 them to me.

6 MR. RICHMAN: They were given to me, by
7 the way, your Honor, by Mr. Phillips' office.

8 THE COURT: By Mr. Phillips?

9 MR. RICHMAN: Right.

10 THE COURT: All right.

11 MR. FISHER: If your Honor please, I think
12 at least where there are tapes of the main witness dealing
13 with the main defendant in this case how Mr. Curran can
14 get up and say clearly they are not 3500 material is
15 somewhat puzzling. Certainly at a minimum they should
16 have been made known to the court and the court should
17 have listened to them.

18 That is the problem we are getting at. If
19 Mr. Richman weren't in this case --

20 THE COURT: Look, I am going to listen to
21 them. What more do you want?

22 MR. FISHER: What I want to know is what is
23 there that we don't know about, your Honor. They
24 keep coming up out of the woodwork.

25 If Mr. Richman weren't in this case we would

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Miller-direct

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2 never know about those. What else is there that we
3 don't know about? Why are we being precluded from
4 asking simple questions, your Honor, not in front of the
5 jury, which could dispose of the matter hopefully in
6 three seconds.

7 THE COURT: You are not being precluded from
8 asking proper, simple questions. Go ahead, ask the ques-
9 tion. Let's see what happens.

10 BY MR. FISHER:

11 Q Mr. Miller, are there any records indicating
12 if and when a Kel or similar transmitting device was used
13 in connection with Mr. Barnaba?

14 THE COURT: Same question, same objection,
15 same ruling.

16 Q Mr. Miller, was there an investigation involv-
17 ing Mr. Barnaba and Mr. Inglese denominated under some
18 other name or number than the case we are dealing with
19 here has been denominated in your office?

20 You understand what I mean --

21 THE COURT: That is a fishing expedition.

22 MR. FISHER: That is just as a predicate for
23 a question, your Honor. What I am getting at is I
24 would like to know -- all right.

25 Q In addition to the tape that you have given

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Miller-direct

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to Mr. Phillips or Mr. Curran which we have referred

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to as A-274 and 11/14/72, is there any other tape

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recording of John Barnaba relating in any way to Carmine

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Tramunti, Louis Inglese, Joseph Delvecchio, Donato Christian

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Thomas Lentini, Angelo Mamone, Joseph DiNapoli, Carmine

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Pugliese, Frank Pugliese, Joseph Ceriale, John Gamba, An-

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thony Loria, Vincent D'Amico, Dominick Lessa, Benjamin

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Tolopka, George Toutoian, Frank Pellegrino, Joseph Marchese,

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Richard Forbrick, Frank Russo, Warren Robinson, Thomas

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Dawson, Al Greene, William Alonzo, Hattie Ware, John Spring-

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er, Mary Jane Salvani, Henry Salley, Basil Hansen,

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Estelle Hansen and John Doe, a/k/a Jimmy Wyatt Earp?

14

A Yes.

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THE COURT: Do they have anything to do
with narcotics?

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THE WITNESS: Yes, sir.

18

Q In addition, may I ask with regard to the
co-conspirators.

19

20

THE COURT: Go ahead.

21

MR. FISHER: Does your Honor still have the
list of the co-conspirators?

22

23

Let's see if I can remember.

24

Q In addition --

25

THE COURT: Aren't they in the indictment?

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Miller-direct

1074

2 MR. ELLIS: It's in the bill of particu-
3 lars.

4 MR. FISHER: I don't think it is complete.

5 THE COURT: It is in the bill of particulars.

6 BY MR. FISHER:

7 Q In addition, sir, are there any tape recordings
8 of John Barnaba dealing with or in which the following
9 people are mentioned: Leo Cimino, John Doe,
10 a/a/a Ernie Pontiac, Paul Gregorio, a/k/a Paulie the
11 Arrow, John Doe, a/k/a Vinnie, Louis Lepore, John Doe,
12 a/k/a Mike, Vincent Papa, Frank Stasi, a/k/a Boo-Boo,
13 John Doe, a/k/a Jimmy, John Doe, a/k/a Batty, Sophie
14 Inglese, John Doe, a/k/a Burke, Anthony Pagano, John Doe,
15 a/k/a Joe Sharp, Frank Monaco, Frank Lalli, a/k/a Joe
16 Flats, Alfred Lalli, Sal Landi, John Doe, a/k/a Ray,
17 described, I believe, as a black, John Doe, a/k/a Jimmy,
18 John Dingle, Primrose Cadman, Louis Oliveras, Jack Spada,
19 John Doe, a/k/a Ralph Birdie, John Doe, a/k/a Bubba,
20 Martin DeSaverio, a/k/a Jinx, Marion Starace --

21 MR. CURRAN: Objection.

22 Q -- Pellegrino, Harry and John Pannirello.

23 MR. CURRAN: I am sorry, your Honor. I
24 thought he was finished.

25 MR. FISHER: So did I. I can understand

why you might feel that way.

Q John Dugan, Joseph Andretta, Harry Pannirello, John Pannirello, James Provitero, John Doe, a/k/a Bubbles, and John Doe, a/k/a Georgie.

MR. CURRAN: Objection, your Honor.

MRS. ROSNER: Tutino.

THE COURT: I think Tutino was in there.

MR. FISHER: I think I missed The General, your Honor.

THE COURT: All right. Now the question is ended.

MR. CURRAN: Objection, your Honor.

MR. FISHER: Not after all that, your Honor.

THE COURT: If you add a couple of words you might get some place. You talk about just tape recordings involving these people. You have to go a little farther than that.

BY MR. FISHER:

Q I asked, if I recall correctly, perhaps I misspoke -- Mr. Miller, tape recordings involving that long list of people of John Barnaba, in other words, of Barnaba's voice.

THE COURT: In connection with narcotics.

Q In connection with narcotics in the City of

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New York.

MR. CURRAN: Objection.

THE WITNESS: Should I answer that, your
Honor.

THE COURT: Yes, you can answer that
question.

A Yes.

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2 Q Do you have these tapes, are these tapes in
3 existence?

4 A Yes.

5 Q Are they available to you?

6 A They are in our office and -- I assume all of
7 them are in our office. It's the usual procedure.

8 -- Q -- Would you be able to produce those by the end
9 of the day for defense counsel, or if the Court rules,
10 for inspection by his Honor?

11 MR. CURFAN: Your Honor, I object to the request
12 or the direction or the question. The tapes have already
13 been turned over either to the defense counsel or to the
14 Court.

15 Any other tapes which may exist its the govern-
16 ment's position have no relation to the subject matter of
17 Barnaba's direct testimony and are not related, indeed, to
18 this case. Therefore, this is simply a fishing expedi-
19 tion. He wants to just go on and on finding out everything
20 Mr. Barnaba may have done in the last nine months or a
21 year.

22 MR. PHILLIPS: Your Honor, may I just add to
23 that. With respect to those tapes that Barnaba appears
24 on, that he was wired up, so to speak, some of those tapes
25 were turned over to the government some time ago. They

1 pp2 Miller-direct

2 were made available to defense counsel at the beginning
3 of January of this year along with other debriefing
4 tapes.

5 Counsel for the defendants, specifically, Mr.
6 Oppenheimer representing Nancy Rosner, came to my office
7 and said the only tapes that he wanted to take with him
8 and make copies of were the debriefing tapes. There
9 was one attorney and only one attorney that came to my
10 office to listen to the Barnaba undercover tapes and that
11 was Mrs. Everett, who came from Mr. Ellis's office, who
12 represents Mr. Mamone. Other than that no other counsel
13 came to either listen to the tapes or take the tapes to
14 make copies of them.

15 There were then other tapes that appeared that
16 involved Barnaba in an undercover capacity where he was
17 wired up. These tapes were turned over to your Honor a
18 couple of weeks ago for your Honor's listening, it being
19 the government's position that those tapes that were turned
20 over to your Honor as well as the tapes that Mrs. Everett
21 listened to are not 3500 material because they do not
22 relate to Barnaba's direct examination.

23 MRS. ROSNER: Your Honor, if I may respond to
24 the portion of Mr. Phillips' allegations that relate to
25 Mr. Oppenheimer, I know of no such conversation on relation

pp3

Miller-direct

of Mr. Oppenheimer. In fact, he told me that we were getting all the tapes that related to Barnaba that existed.

I never authorized him to decline to accept tapes of Barnaba other than debriefing tapes. We now move for any such tapes, whether they be debriefing tapes or Kel-type transmissions.

MR. FISHER: You know, there may be no problem here, your Honor.

MR. ELLIS: Your Honor, may I respond also, since my name was brought into that.

Mrs. Everett reported to me that she had in fact listened to certain pre-arrest tapes other than debriefing tapes. She did not advise me that there were any Barnaba tapes among those that she listened to. If there are, I too move for their production.

MR. RICHMAN: If the Court please, with reference to the tapes I alluded to earlier, they involve Frank and Alfred Lalli, two co-conspirators in this case. The tapes involve, which I heard from the tapes, on or about December, 1970, John Barnaba addressing both Lallis, saying to them, "Could you go see Gigi? I can't see him. He won't see me. He won't have anything to do with me."

I think that involves something with this case.

1 pp4 Miller-direct

2 THE COURT: You are going to give me those
3 tapes.

4 MR. CURRAN: Your Honor, for the record, Mr.
5 Richman said December, 1970. I think he might want to
6 clarify that date.

7 MR. RICHMAN: 1972, December of 1972.

8 THE COURT: All right.

9 MR. FISHER: May I ask about two more questions?

2 10 THE COURT: Let's get everyone first.

11 MR. ROSENBERG: Your Honor, Mr. Curran has
12 indicated he has turned over all the tapes as far as he
13 is concerned that have anything to do with this case.

14 May I suggest it's not his appraisal as to what
15 is in the possession of Rogers' office as to whether or not
16 it's pertinent or germane to this. We have a right and the
17 opportunity to listen to it and make our own determination.

18 THE COURT: No, you don't. Whatever has to be
19 listened to I will listen to.

20 MR. ROSENBERG: That is good enough.

21 THE COURT: Fine. If it's good enough, then
22 sit down.

23 MR. FISHER: May I make this suggestion, your
24 Honor: would your Honor ask Mr. Miller to bring over
25 all such tapes that are in existence. Then they can be

1 pp5

Miller-direct

2 compared with those tapes the government claims have been
3 made available.

4 As to those that have been made available,
5 surely there is no problem, they are still available.
6 As to those which the government would claim they are not
7 properly 3500 material, they may be submitted to your
8 Honor. There is no point in your Honor reviewing a lot
9 of tapes many of which the government claims have already
10 been turned over.

11 THE COURT: My ears are in tough shape now from
12 listening to tapes.

13 It seems the simplest thing to do. Mr. Miller,
14 can you or can we have somebody from the U.S. Attorney's
15 office go over and get these tapes. I will listen to them
16 if I have to. I don't even know exactly where it's going
17 at this point.

18 MRS. ROSNEP: Your Honor, may I join Mr. Fisher
19 in the hearing with three short questions before the witness
20 is excused.

21 MR. CURRAN: Your Honor has directed the witness
22 now to produce every tape that he has?

23 THE COURT: Oh, no, no.

24 THE WITNESS: May I explain something, your
25 Honor?

1 pp6 Miller-direct

2 THE COURT: Wait a second.

3 Mrs. Rosner, go ahead.

4 CROSS EXAMINATION

5 BY MRS. ROSNER:

6 Q Mr. Miller, to your knowledge, how many separate
7 tape recordings exist in which John Barnaba is a participant
8 in the conversation?

9 MR. CURRAN: I object.

10 THE COURT: Sustained.

11 Q Mr. Miller, how many tape recordings involve
12 Kel-type transmissions where Mr. Barnaba was wearing a body
13 recorder?

14 MR. CURRAN: Objection.

15 THE COURT: Sustained.

16 Q Mr. Miller, how many conversations are there
17 which are tape-recorded which are in the nature of de-
18 briefing conversations?

19 A One, to my knowledge.

20 Q Does that tape recording reflect the conver-
21 sation of one day or more than one day?

22 A I have never listened to it. It's one day,
23 as far as I know.

24 Q Are there tape recordings apart from this one
25 debriefing conversation which you have described which are

1 pp7

Miller-cross

2 in the nature of Kel-type transmissions?

3 MR. CURRAN: Objection.

4 THE COURT: Sustained.

5 MRS. ROSNER: Let me put the question in a
6 different form, your Honor.

7 Q Are there tape recordings which were made by
8 Kel-type transmissions or body recordings relating to
9 narcotics in which the person wearing the body recorder
10 was John Barnaba and individuals spoken to were individuals
11 among those on the list which Mr. Fisher read off to you?

12 MR. CURRAN: Objection.

13 THE COURT: Sustained.

14 Q Were there attempts at Kel-type transmission
15 recordings which were unsuccessful and for which there may
16 be blank tapes or inaudible tapes?

17 MR. CURRAN: Objection.

18 THE COURT: Same question, same ruling, sus-
19 tained.

20 MRS. ROSNER: Your Honor, I incorporate in that
21 question, if your Honor will permit, all the elements of
22 the prior questions with respect to the maker, the persons
23 involved in the conversation and the subject matter of the
24 conversation.

25 THE COURT: Yes. The same ruling.

pp8

Miller-cross

MRS. ROSNER: I have one other question.

THE COURT: You just had a couple of questions.

MRS. ROSNER: I think it's important to protect the record, your Honor.

THE COURT: Go ahead.

BY MRS. ROSNER:

Q Mr. Miller, to your knowledge, when an individual is equipped with a wire transmitter or body tape recorder of any kind is some kind of paper or form filled out reflecting each and every occasion when such a transmission is attempted?

MR. CURRAN: I object.

THE COURT: Sustained.

Mr. Miller, you wanted to say something.

THE WITNESS: Your Honor, several months ago, perhaps even longer, Mr. Curran or Mr. Phillips -- I am not sure which -- asked our office for copies of all tape recordings that had the voice of any of the defendants or co-conspirators on them and to my knowledge all of those tapes were turned over to the U.S. Attorney's office.

It is possible that there are conversations where Mr. Barnaba was a party and someone's name was mentioned who is a defendant or co-conspirator, but who was not a party to that conversation. If such things exist,

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Miller-cross

I don't know about it, but it's possible, because there are other tapes not turned over.

MR. KING: Your Honor, may I ask just one question of the witness?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. KING:

Q Mr. Miller, I am hard of hearing. Would you please move yourself closer to the mike.

I want to ask you specifically whether you have any memorandum in any form as a result of your conversation with Barnaba relating to the defendant John Gamba.

MR. CURRAN: Objection, your Honor.

THE COURT: Sustained.

MR. FISHER: Your Honor, I hesitate to tread upon your patience too much longer, but there is one very tiny area I forgot to inquire about.

THE COURT: You are kidding. Go ahead.

FURTHER DIRECT EXAMINATION

BY MR. FISHER:

Q Mr. Miller, so far as you know, did Mr. Barnaba during the course of his work for your office telephone various police officers?

1 pp10

Miller-cross

2 MR. CURRAN: Objection, your Honor.

3 MR. FISHER: What I would like to know, your
4 Honor, is whether or not there were tape recordings made
5 of such telephone conversations of John Barnaba relating
6 to his activities in narcotics work dealing with any of
7 the defendants in this case or the names of the co-
8 conspirators or log entries of such telephone calls.

9 MR. CURRAN: Objection.

10 THE COURT: I will sustain it.

11 Mr. Miller, I gather you are telling me that all
12 of the recordings were turned over to the United States
13 Attorney's office, to the best of your knowledge, is that
14 correct?

15 THE WITNESS: Yes, that's correct, your Honor.

16 THE COURT: All right. Then my direction
17 before is withdrawn.

18 All right. Step down.

19 (Witness excused.)
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2 MR. FISHER: Your Honor, in other words, Mr.
3 Miller is not being asked to bring over the tapes --

4 THE COURT: He said he brought them all over.

5 MR. FISHER: That doesn't mean that the
6 government gave us everything that Mr. Miller brought over.

7 THE COURT: All right. It means that Mr. Miller
8 has turned over to the government and they have turned over
9 to the defense everything that they considered to be 3500
10 material, and those that they did not they have turned
11 over to me.

12 MR. FISHER: May we ask Mr. Miller to submit in
13 letter form a list of every tape that satisfies the two
14 questions I asked, which he says were given to the govern-
15 ment?

16 THE COURT: No.

17 MR. FISHER: The record must reveal precisely
18 what tapes exist and what tapes were turned over, or else
19 the defendants haven't the slightest bit of protection
20 here.

21 THE COURT: No.

22 MR. FISHER: And I submit they should be marked
23 as exhibits, your Honor, Court exhibits.

24 THE COURT: 3500 material is marked in the 3500
25 series. Those which were not turned over were marked and

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2 sealed. It's all been taken care of.

3 MR. FISHER: But, your Honor, there is nothing
4 in the record to indicate what Mr. Miller had in his office
5 and what was turned over to the government. Suppose he
6 turned over twenty tapes, and the government gave us ten.
7 Why are the defendants forced to rely on their representa-
8 tions, your Honor? We are not friends in this court-
9 room.

10 THE COURT: Oh, I am aware of that. I am aware
11 of that.

12 No, there is no necessity for that type of
13 procedure.

14 MR. FISHER: There is no necessity in Washington,
15 either, your Honor, I respectfully submit, but we've got
16 to get to the bottom of this. There is no reason in the
17 world -- there is no prejudice to anybody in this case
18 by listing what tapes exist and what tapes have been turned
19 over to the government. Every day something else pops up.

20 THE COURT: Forget about it.

21 MR. CURRAN: One prejudice that occurs to the
22 government with this type of fishing expedition is that
23 we have lost about an hour of trial time this morning.

24 MR. ELLIS: Your Honor, I would like the
25 record to reflect that I was given one debriefing tape,

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2 and I have not seen or heard any pre-arrest Barnaba
3 tape.

4 THE COURT: They are available.

5 MR. ELLIS: Are they, Mr. Curran?

6 THE COURT: Please. If they were available
7 once, they are still available.

8 MR. ELLIS: I don't know if they are available.

9 THE COURT: Well, if you went and checked, you
10 would find out.

11 MR. ELLIS: I did, your Honor. My office was
12 there for a week.

13 THE COURT: All right.

14 Now, Mr. Pollack, I believe you have an applica-
15 tion.

16 MR. POLLACK: Yes, your Honor. I would like to
17 put on the record the fact that I received a telephone call
18 yesterday afternoon, pursuant to which I appeared in court
19 and had a discussion with the Court and a representative of
20 the U.S. Attorney's office.

21 I indicated at that time that with considerable
22 reservations I would be willing to accept the assignment
23 to represent Mr. Henry Salley. However, I also indicated
24 that I would wish to make a motion this morning. In fact,
25 there are two applications I have.

1 pp4

2 The first application is that I would move for
3 a severance in this case. Obviously, the Court is aware,
4 and all counsel are aware, of the unfortunate passing of
5 Mr. Salley's attorney, who started this trial, and of
6 course, it is almost an impossibility for another attorney
7 to come in in the middle of a trial, and I think there
8 would have to be some prejudice to the defendant if he
9 were forced to continue in this trial, which I understand --
10 yesterday I was told by the government that the trial was a
11 week old. However, I was told there were suppression hear-
12 ings before that, and now some of the defense counsel tell
13 me it is over. I think one of the defense counsel told me
14 the trial was about a month old already.

15 Be that as it may --

16 THE COURT: It only seems that long.

17 MR. POLLACK: Be that as it may, your Honor,
18 I submit there has to be prejudice to Mr. Salley, and I
19 would move at this point to sever his case from the rest of
20 the case.

21 THE COURT: All right. Your motion is denied.

22 MR. POLLACK: My second application has to do with
23 my own preparation to step into the case.

24 Now, yesterday I was given somewhat of a de-
25 briefing -- or yesterday I was given a quick briefing of

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2 what had taken place so far, and I was given some of the
3 material. I was not given any 3500 material, and having
4 come in late yesterday afternoon, of course, I have had
5 little opportunity to read the portion of the material that
6 I have, and I understand that there is additional material.

7 Under the circumstances, I think, in all
8 fairness to my client, Mr. Salley, I would ask for a few
9 days' continuance in this case.

10 Now, I understand from the Court and from the
11 U.S. Attorney that no evidence has come in against my
12 client whatsoever, and the U.S. Attorney represents to me
13 that there will be no direct evidence linking Mr. Salley
14 with the conspiracy until some time in the middle of next
15 week by which time I would presumably have had an opportunity
16 to observe the rather voluminous materials, some of which
17 I have, and also the portions that I don't have of the
18 3500 material.

19 However, I respectfully submit that this is
20 a conspiracy case. Now, one possible defense of my client
21 would be that the conspiracy did not exist. I think I
22 should have some opportunity before I actually step into
23 the picture to acquaint myself with what has gone on before,
24 and obviously it was a physical impossibility to do that
25 from last night to this morning, and I would therefore

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2 ask for a continuance until at least Monday.

3 THE COURT: No. Although I did say that we
4 were going to sit on Saturday to catch up with this case,
5 we are going to take off Saturday and Sunday, and hopefully
6 we will be able to catch up.

7 MR. POLLACK: Also, while I was promised 3500
8 material, I wasn't given any.

9 THE COURT: You will get it.

10 MR. POLLACK: I don't think that was in-
11 tentional.

12 MR. FORTUIN: Your Honor, I would like the
13 record to reflect that Mr. Pollack came to my office last
14 night, and I gave him a stack of materials, including the
15 Pannirello tape --

16 MR. POLLACK: I did receive that. That is 3500
17 material.

18 MR. FORTUIN: Also, a transcript of the opening,
19 the indictment, the bill of particulars. And I asked him
20 if he wanted additional 3500 material, and he indicated
21 he couldn't handle it at that time, and I told him I would
22 give it to him when he wanted it.

23 THE COURT: You will make it available?

24 MR. FORTUIN: Certainly.

25 THE COURT: But the man only has two hands.

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MR. POLLACK: I want to clear the air for a moment, your Honor. I stand corrected. I did receive the one item here which does constitute 3500 material, and of course counsel is correct that I received a portion of the transcript and the indictment, but I did not receive -- I requested the 3500 material with regard to certain witnesses for next week, and I was told that I would get that, but that I did not get yet.

THE COURT: You will get it, I am sure.

MR. ELLIS: Your Honor, in view of your rulings on Mr. Pollack's applications, I would move for an adjournment on behalf of Mr. Mamone because of the prejudice to Mamone by having an admittedly unprepared attorney defending a co-conspirator. Whatever mistakes he makes, because of unpreparedness, whatever objections he doesn't make will prejudice Mamone, and I move for an adjournment or, in the alternative, for a severance.

THE COURT: All right. Denied.

I assume everybody joins in that motion. It is denied as to everybody.

You won't believe it, but we are up to the point where we take our morning break. We will take that break, and when we get back, we are going to go through without any more applications and, particularly, without any more

outbursts from any of the defendants.

I have had it up to here with the conduct of some of the defendants, and I am not going to take it any more.. Is that clear?

I want each and every counsel to advise his client as to what can happen to them. If the conduct continues, I will have to assume that counsel failed to so advise their clients, and I will take appropriate steps then.. Do you understand?

Be back here at 15 minutes past eleven.

(Recess.)

(Jury in box.)

THE COURT: Ladies and gentlemen, I know you have been wondering for the last couple of days what's been going on..

Unfortunately, Mr. Murray Segal, who had a history of heart trouble, had a heart seizure, and Mr. Harry Pollack is taking his place.

Mr.. Pollack, would you stand up?

MR.. POLLACK: Good morning.

THE COURT: Now, does any member of the jury know Mr.. Pollack or have you ever had any dealings with him?

All right. I assume the answer to that is no.

All right. Thank you, Mr. Pollack.

All right, Mr. Phillips.

MR..PHILLIPS: The government calls James O'Donnell.

JAMES O'DONNELL, called as a witness on behalf of the government, being first duly sworn testified as follows:

THE WITNESS: Shield 3821, New York Drug Enforcement Task Force.

MR..ROSENBAUM: If your Honor please, our vision is completely obstructed.

THE COURT: All right. Will counsel back there come over here.

DIRECT EXAMINATION

BY MR.. PHILLIPS:

Q Detective O'Donnell, what is your present assignment?

A I am assigned to the New York Drug Enforcement Task Force.

Q Is that task force made up of both State and Federal agents?

A That's correct, sir.

Q And what are your duties with that task force?

A Investigation and arrest of major and middle

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pp. O'Donnell-direct

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level narcotic traffickers.

Q How long have you been a detective with the New York City Police Department?

A Since December 20, 1972.

Q And how long have you been with the Police Department all told?

A Approximately seven and a half years.

Q Directing your attention to May 1, 1973, were you on duty on that day?

A Yes, sir.

Q Did you have occasion to conduct surveillance that day?

A Yes, sir.

Q Was there a specific person that you were surveilling?

MR. EPSTEIN: I object, your Honor.

THE COURT: I will permit it.

A Yes, sir; there was.

Q Could you tell us who that was?

A Yes, sir. Frank Stasi.

Q Where did you first see Mr. Stasi that day?

A Leaving his residence.

Q Where is that located?

A 1113 Vincent Avenue, Bronx, New York.

Q And could you tell us briefly where you had occasion to follow him that day?

A I followed him to various locations in the Bronx, down to Pleasant Avenue in New York City, and back to the Bronx.

Q And when he went back to the Bronx, can you tell us where he went?

A Yes, he went to the Lo Piccolo Espresso Coffee House on Westchester Avenue.

Q Approximately what time was that, if you can recall?

A Between 7:20 and 7:40 p.m.

Q Did you see what he did after he went to the Lo Piccolo?

A Yes, sir. He parked his car and entered Lo Piccolo.

Q Did you see what happened after that?

A After a few minutes he came out of the

Lo Piccolo.

Q Was he with anybody?

A Yes, sir, he was.

Q Could you tell us who he was with?

A He was with Carmine Tramunti and Louis Inglese.

Q What occurred then?

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2 A They had a brief conversation for a few
3 minutes.. Stasi got into his car with Inglese, Tramunti
4 got into his car and they both proceeded down Westchester
5 Avenue..

6 Q Did you follow either of the cars?

7 A Yes, I followed the Stasi car.

8 Q Where did it go?

9 A It went to Middletown Road and Westchester Avenue
10 and parked.

11 Q Now, do you see either Mr. Inglese or Mr.
12 Tramunti in the courtroom?

13 A I see Mr. Tramunti and I see Mr. Inglese.

14 Q Will you describe where each is and what he
15 is wearing?

16 A Mr. Tramunti is on the extreme side there,
17 wearing a blue suit. Mr. Inglese is wearing a gray sweater
18 and a red shirt.

19 MR. PHILLIPS: May the record reflect
20 that the witness has identified the defendants Tramunti
21 and Inglese?

22 THE COURT: Yes.

23 Q Going back in time, Detective O'Donnell,
24 did you also have occasion to conduct surveillance on
25 February 12, 1973?

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A Yes,, sir.

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Q During the course of that surveillance, did you have occasion to go to a place called The Tear Drops Bon-Soir?

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A Yes,, sir.

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Q And do you recall what time you went there?

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A About 9:30, 9:35.

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Q Where is it located?

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A Boston Road and Baychester Avenue, Bronx, New York..

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Q And what type of a place is it?

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A It's a cabaret; has a bar. Cabaret; has a

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Q Do you recall whether there was anybody, any guest there that evening, that is, performing?

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A Yes,, sir; Buddy Rich and his Orchestra were performing that night.

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Q Would you tell us, did you follow anybody to the Tear Drops Bon-Soir?

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A Yes,, I did.

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Q Whom did you follow?

22

A Frank Stasi.

23

Q Was he with anybody?

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A Yes, he was with two male whites.

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Q Was he walking or in an automobile?

11 mpa4 O'Donnell-direct

12 A He left Lo Piccolo Coffee House in his own
13 vehicle..

14 Q Could you tell us what he did after he arrived
15 at the Tear Drops Bon-Soir?

16 A Yes, sir. He parked the vehicle across the
17 street.. The two male whites left the car and went into
18 the Lo Piccolo -- correction, went into the Bon-Soir.
19 Stasi remained outside for a few minutes and then he
100 entered..

111 Q What did you do after Stasi entered?

112 A I attempted to enter the Bon-Soir.

113 Q Were you with anybody? .. with anybody?

114 A Detective Kevin Daly. .. Kevin Daly

115 Q And what occurred when you attempted to
116 enter the Bon-Soir?

117 A I was stopped at the door.

118 Q By whom?

119 A Apparently the maitre d' and several other
120 males..

121 Q Did you have a conversation with those people

122 A Yes.

123 Q What was said?

124 A I was informed --

125 MRS. ROSNER: Objection, your Honor. Hear-

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say..

THE COURT: I will sustain it.

Q What occurred when you tried to get into the Bon-Soir??

A I was stopped and told that --

MRS. ROSNER: Same objection, your Honor.

A -- that I had --

THE COURT: Same ruling.

MR. PHILLIPS: Your Honor, we aren't offering it for the truth of the contents.

MR. FISHER: Your Honor, the witness' state of mind is not at issue, either.

THE COURT: All right. After you were stopped, did you eventually get into the Bon-Soir Tear Drops??

THE WITNESS: Yes, sir.

Q Could you tell us how you got into the Bon-Soir Tear Drops?

A I had to purchase tickets. I had been informed that the reservations --

MRS. ROSNER: Objection to what he had been informed and move to strike, your Honor. Same objection.

THE COURT: Well, there is nothing to

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strike.. He just said he had been informed.

Your purchased tickets, is that right?

THE WITNESS: That's right, your Honor.

THE COURT: Okay.

Q How much did the tickets cost?

A They were \$10 apiece.

Q Did you have to pay anything in addition to that??

A Detective Daly gave the individual extra money to let us in because we were under the impression it was a private party.

MRS. ROSNER: Objection as to why and move to strike..

THE COURT: No.

Q What gave you the impression that it was a private party?

MR. EPSTEIN: Objection, your Honor.

MRS. ROSNER: Objection, your Honor.

THE COURT: I will sustain it.

Q Did you have occasion to see the guest list?

A Yes, sir.

Q And what was on the guest list?

MR. EPSTEIN: Objection, your Honor, hearsay.

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THE COURT: No.

A. After we had reservations, we were told --

MRS. ROSNER: Same objection.

THE COURT: I don't want to hear what was said.. Did you see the guest list?

THE WITNESS: Yes, sir.

THE COURT: What was on it?

THE WITNESS: All first names and all nicknames..

Q. Did you tell the maitre d' that you had a reservation?

A. Yes.

Q. Did you say in whose name?

A. Yes, sir.

Q. In whose name?

MR. EPSTEIN: Objection, your Honor.

THE COURT: No.

A. I used the name Manzini.

Q. Did you and Daly go in together?

A. That's correct.

Q. What part of the Tear Drops Bon-Soir did you go to?

A. We went to the bar.

Q. Now, would you look behind you, Detective

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O'Donnell, and tell us whether or not Government Exhibit
59 is an accurate representation of the inside of the
Tear Drops Bon-Soir?

A. Yes, sir.

Q. Would you tell us where you and Detective Daly
went to. Point it out, that is.

A. Right here (indicating).

Q. Indicating where that X is?

A. Yes.

Q. In front of the bar?

A. Yes, sir.

Q. Did you see anybody inside the Tear Drops
Bon-Soir that you recognized?

A. Yes, sir.

Q. Who was that?

A. Carmine Tramunti and Frank Stasi.

Q. Would you put the initials CT where Carmine
Tramunti was located and the initials FS where Mr. Stasi
was located?

A. (Witness marks.)

Q. Were they at a table?

A. Yes, sir.

Q. Was there anybody else at the table?

A. Yes, sir.

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Q Did you recognize anybody else at the table?

A No, sir. There was several males and about three females.

Q And were Mr. Stasi and Mr. Tramunti sitting together or apart from each other?

A They were sitting next to each other.

Q How long were you in the Tear Drops Bon-Soir that evening?

A About four and a half or five hours.

Q Were Mr. Stasi and Mr. Tramunti in there the entire time -- that you were there, that is?

A I lost sight of Stasi for a few minutes.

Q Was Mr. Tramunti there the entire time?

A Yes, sir.

Q And when they were sitting down, were they sitting at the same table?

A Yes, sir.

Q Did you observe them doing anything while they were sitting at a table?

A Yes, sir.

Q What were they doing?

A They appeared to be in conversation, speaking into one another's ear from time to time.

Q Was there anybody standing nearby the table

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Q'Donnell-direct

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that Stasi and Tramunti were sitting at?

A Yes, sir.

Q Did you recognize that individual?

MR. EPSTEIN: Objection, your Honor. Ir-
relevant..

THE COURT: No, I will permit it.

Q Did you recognize that individual?

A No, sir.

Q Could you describe him?

A Yes, sir, he was a male white, about 37, six
foot-two inches, about 270 pounds.

Q Could you describe or put an X on the black-
board where he was standing?

A He was standing right --

Q Where you just indicated with the X?

A That's correct.

Q How close was he to Mr. Tramunti?

A A matter of about three feet or four feet.

Q Did he stand the entire time or did he ever
sit down while you were there?

A No, he sat down.

Q How much of the time was he sitting down and
how much of the time was he standing?

A I would say the majority of the evening he stood.

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mpa: -----O'Donnell-direct 1115

Maybe 45 minutes to an hour he sat.

Q Did you have occasion to go to the men's room
'that evening? --

A Yes, sir.

Q Would you point out where the men's room is.

A (Drawing on exhibit.)

Q And did you go by the table that Mr. Stasi and
Mr..Tramunti were sitting at?

A Yes, sir.

Q Did anything unusual occur when you went
by there?

MR. EPSTEIN: Objection, your Honor.

THE COURT: No, I will permit it.

A When I passed, this individual was standing
next to Mr. Tramunti. He placed his hands around the
back of my waist and the sides of my waist.

MR. EPSTEIN: Your Honor, I object and I
move to strike.

THE COURT: I will grant it.

Ladies and gentlemen of the jury, just ignore
the last answer.

Q Did a Detective Connally join you at any
time inside the Tear Drops Bon-Soir?

A Yes, sir.

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mpa O'Donnell-direct 1116

Q Was that after you and Daly got inside?

A Yes, sir.

Q And did anybody obtain a camera that evening,
any of the three of you?

A Yes, sir, Mr. Connally.

Q And did he leave to obtain the camera and then
come back?

A Yes, sir.

Q Was there anybody inside who was taking photo-
graphs?

A Yes, sir, patrons.

Q And of what were they taking photographs?

A Buddy Rich and his Orchestra.

Q Where was Buddy Rich and his Orchestra located
on that diagram?

A (Indicating)

Q Where it says "Band"?

A Correct.

Q Did you or Detective Connally and Detective
Daly attempt to take photographs of Buddy Rich and his
Orchestra?

A Yes, sir.

Q Did you attempt to take any photographs of
Carmine Tramunti and Frank Stasi?

11 mpa O'Donnell-direct 1117

12 A No, sir.

13 Q Was anybody in the Tear Drops Bon-Soir attempt-
14 ing to take any photographs of anybody in the direction
15 that Stasi and Tramunti were sitting?

16 MR. EPSTEIN: Objection, your Honor.
17 It calls for a conclusion.

18 THE COURT: I will permit it.

19 A I didn't observe anybody taking pictures
100 off that.

111 MR. PHILLIPS: May this be marked as a
122 government's exhibit.

123 (Government's Exhibit 60 was marked for ident-
124 tification.)

xx 15 Q Detective O'Connell, I show you what has been
16 marked Government's Exhibit 60 for identification and ask
17 you if you are able to identify that.

18 A Yes, sir.

19 Q What is it?

20 A It's the ticket that was handed to me at the
21 Bon-Soir.

22 Q Now, there is some writing on the other side.
23 Can you tell us what that writing is?

24 MRS. ROSNER: Objection, your Honor. It
25 is not in evidence.

mpa: O'Connell-direct

1118

MR. PHILLIPS: I am not asking him to read
it, your Honor. I am asking him to describe what it
is.

THE COURT: All right.

A: It's a license plate number.

Q: Whose license is it?

A: I'm not sure at this time.

Q: Did you receive this particular Government
Exhibit 60, this ticket, on the evening of February 12,
1973?

A: Yes, sir.

MR. PHILLIPS: Government offers Government's
Exhibit 60 for identification.

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O'Donnell-direct

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2 THE COURT: Does anyone have any objection
3 to 60 for identification?

4 MR. EPSTEIN: Yes, your Honor, if you
5 please.. I have objections as to the written notation
6 on the back of the ticket. There has been absolutely
7 no foundation for its receipt into evidence.

8 MRS. ROSNER: Your Honor, I object on the
9 further ground that it is a self-serving declaration,
10 hearsay..

11 MR. FISHER: In behalf of defendant Chris-
12 tiano,, your Honor, I object on the grounds of relevancy.

13 MR. ROSENBERG: If your Honor please, I have
14 an objection which I would like to make on the record at
15 the side bar. I have an application.

16 THE COURT: All right.

17 (At the side bar.)

18 MR. ROSENBERG: If your Honor please, I am
19 objecting to the entire testimony of the last
20 two witnesses. It started off that they were on a
21 buy surveillance. Now, the testimony that was
22 elicited from the last two witnesses is really of very
23 little probative value.

24 Accordingly, I think that not only Tramunti
25 was prejudiced in that area, but all the other defendants,

1 jha:

O'Donnell-direct

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2 and accordingly I am going to ask that it be excluded.

3 THE COURT: All right. That is denied.

4 MR. RICHMAN: I would join in the applica-
5 tion, your Honor, on behalf of Tolopka.

6 MR. ROSENBERG: My next application in
7 view of the court's ruling would be for a mistrial.

8 MR. RICHMAN: I would join in that applica-
9 tion too.

10 THE COURT: That is denied too.

11 You have an objection too?

12 MR. EPSTEIN: No. I only addressed myself
13 to the writing on the back of Government's Exhibit 60.
14 I object to it. We have no idea how it got there, we
15 have no idea who wrote it, we have no idea what it
16 pertains to.

17 MR. PHILLIPS: We are not offering that.
18 We will have that masked.

19 MR. LOPEZ: - Your Honor, Mr. Inglese just ad-
20 vised me that he is not feeling too well, that at an
21 opportune time if your Honor could have him examined.
22 He hasn't been eating sweets of any kind.

23 THE COURT: All right.

24 MR. EPSTEIN: With your Honor's permission,
25 Mr. Siegal is not here at this time. I expect he should

11 jha: O'Donnell-direct 1121

22 be here shortly. With the court's permission, I will
33 proceed and cross examine this witness.

44 MR. PHILLIPS: I have no further questions,
55 but I would press the following: Mr. Epstein made objec-
66 tion to my question of this witness regarding what
77 occurred when he went to the men's room. We submit
88 that the government's theory here is that Mr. Tramunti
99 was the financier of this narcotics organization and our
100 theory is that the individual who was standing there was
111 standing there for the sole purpose of protecting him.

122 I would direct your Honor's attention to Judge
133 Pollack's statement in United States vs. Sperling,
144 which has been published, a district court opinion, that
155 money is the lubricant of the narcotics business.

166 I would further direct your Honor's atten-
177 tion to the Second Circuit case of United States vs.
188 Bynum, which shows that violence is part and parcel of
199 the narcotics business.

200 In light of those decisions and those prin-
211 ciples, I submit that such testimony is relevant to
222 show that this person was frisking down this detective
233 when he passed by Tramunti.

24 THE COURT: Same ruling.

25 MR. EPSTEIN: Thank you, your Honor.

2 (In open court.)

3 MR. PHILLIPS: Your Honor, I have no
4 further questions.

5 THE COURT: Government's Exhibit 60 marked
6 for identification is received in evidence. The
7 notation on the back, however, is to be masked over.

8 MR. PHILLIPS: We are in the process of doing
9 that. When that is done, your Honor, I would like to
10 show that exhibit to the jury.

11 THE COURT: At an appropriate time. I
12 don't want to break up the cross examination.

13 MR. ELLIS: Your Honor, I would object to
14 the receipt of the exhibit as not binding upon Mamone.

15 THE COURT: I understand.

16 ----- (Government's Exhibit 60 was received in
17 evidence.)

18 CROSS EXAMINATION

19 BY MR. EPSTEIN:

20 Q Is it Patrolman O'Donnell?

21 A It is detective.

22 Q How long have you been a detective?

23 A December 20, 1973.

24 Q About three months, right?

25 A That's correct.

1 jha O'Donnell-cross 1123

2 Q I call your attention to the 1st of May of 1973,
3 at approximately 7:30 in the evening. You stated you
4 were in the vicinity of Lo Piccolo Espresso Shop at that
5 hour?

6 A That's correct.

7 Q Where is the Lo Piccolo located?

8 A Westchester Avenue in the Bronx.

9 Q You know the number?

10 A I think it is 3042 Westchester Avenue.

11 Q You testified, did you not, to certain ob-
12 servations that you made at that time and place?

13 A That's correct.

14 Q At the time you made those observations where
15 were you?

16 A I was in an automobile.

17 Q Where was the automobile situated?

18 A It was parked south of the espresso house.

19 Q On which side of the street?

20 A The same side.

21 Q About how far from the entrance to the espresso
22 house?

23 A A quarter of a block.

24 Q Was the car parked along the curb or was it
25 double parked in traffic?

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A. At a period of time it was double parked and at one time it was parked.

Q. When it was parked where were you situated?

A. In the car.

Q. Where was the car situated?

A. To the curb.

Q. How far from the entrance to the expresso shop?

A. A quarter of a block, sir.

Q. When the car was double parked how far was the car from the entrance to the expresso shop?

A. About a quarter of a block.

Q. In that particular section of Westchester Avenue is there an elevated subway platform?

A. To the left, yes, sir, to the left of my automobile.

Q. Was that elevated subway platform situated over or at least partially over where the car was situated?

A. Negative.

Q. I take it you mean no?

A. That's right.

Q. Were there any other cars situated along the curb between the vehicle that you were located in and the entrance to the expresso shop?

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O'Donnell-cross

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A Yes, sir.

33

Q About how many in number?

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A Two, three.

55

Q What sort of cars? Cars, vans, trucks; what

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were they?

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A Cars, just regular automobiles.

88

Q In the automobile what location did you

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occupy in the automobile; were you the driver, the

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passenger?

111

A I was the passenger at this time.

122

Q --- Where were you situated in the car?

133

A --- In the front seat.

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Q How many other officers were with you, if you

155

remember?

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A --- One other, I believe.

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Q Do you remember his name?

188

A Detective John Sheehan.

199

Q These observations you testified to, you made

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them from the car?

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A That's correct.

222

Q You said about 7:30 you saw Frank Stasi enter

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Lo Piccolo?

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A No. I would say he exited around 7:30.

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Q Around 7:30?

1 jha O'Donnell-cross 1126

2 A Yes.

3 Q You said there was a conversation, you saw
4 three men together?

5 A That's correct.

6 Q Did you hear what they said?

7 A No, sir.

8 Q At the time that you made these observations
9 to which you testified on direct examination did you
10 have a camera?

11 A No.

12 Q Did your partner have a camer, if you know?

13 A No.

14 Q About how long a period of time would you
15 estimate that the three individuals stood together out-
16 side Lo Piccolo?

17 A One or two minutes.

18 Q Then you saw Mr. Stasi drive off, is that cor-
19 rect?

20 A Yes, sir.

21 Q Who, if you know, was with Mr. Stasi?

22 A Louis Inglese.

23 Q What sort of car was Mr. Stasi driving?

24 A I would say a Buick, late model, blue, two-
25 door, I think, license plate 1050X-ray Thomas.

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O'Donnell-cross

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Q I take it you have a pretty good memory. You remembered the license plate, right?

A That's correct.

Q Did you refresh your memory by anything before you came in to testify?

A No, I remembered his license plate.

Q In other words, you remember this license plate from May of 1973?

A That's correct.

Q There was another vehicle, the car that you say was driven by Mr. Tramunti, is that correct?

A That's correct.

Q What kind of car was he driving?

A Black LTD, late model Ford, two-door, FX3885, I believe, New York.

Q FX3885, is that right?

A It may be. That's also from memory.

Q Let's turn our attention then back to February, February 12, 1973. What time on that evening did you meet with Officer Daly, Kenneth Daly, I believe?

A Originally that day or --

Q No, that night.

A That night?

Q Yes.

1 jha.

O'Donnell-cross

1128

2 A We were situated around 7 o'clock, 8 o'clock
3 in different cars.

4 Q My question to you though was when that night
5 prior to entering the Bon-Soir Tear Drops did you meet
6 Officer Daly..

7 A I would say around 6 o'clock.

8 Q Around 6 p.m.?

9 A Yes, sir.

10 Q Did you stay with Officer Daly from 6 p.m.
11 on?

12 A No. I was in a different car. We were
13 using radios, sir.

14 Q You were in a car with which other officer?

15 A With myself.

16 Q Any other officer with you?

17 A No, sir.

18 Q You followed Frank Stasi's car up to the Bon-
19 Soir Tear Drops?

20 A Yes, sir.

21 Q About how far behind that car were you when you
22 made that trip?

23 A Three car lengths, four car lengths.

24 Q About how long a period of time did you surveill
25 Frank Stasi's car as it drove from Lo Piccolo to the Bon-

Soir Tear Drops?

A I followed Stasi from Pelham and Westchester to the Lo Piccolo, where he entered, and --

Q My question was from the Lo Piccolo to the Bon-Soir how long did the trip take with you driving?

A Five minutes, approximately five minutes.

Q You entered the Bon Soir about what time?

A About 9:30, 9:35, I guess.

Q You said you used the name Manzini?

A Yes, I used the name, last name, Manzini. I said I had to meet people named Manzini here, it was important.

Q You didn't tell them your name was Manzini?

A No.

Q The man at the door ask you for your name?

A No.

Q You went into the Bon-Soir, you sat at the bar, right?

A No, I stood at the bar, sir.

Q You were in the Bon-Soir about five hours, right?

A Four or five hours, yes.

Q Using this courtroom as a guide, about how big would you say the Bon-Soir Tear Drops was?

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O'Donnell-cross

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A I would say the whole place would be half the size of this courtroom.

Q In other words, from about the wall that is directly behind you to, let's say, about the second or the third row in the audience? Is that about right?

A It's close.

Q What about the width?

A I am talking about the length and width.

Q In other words, it's about as long as it is wide?

A Yes, about that size.

Q That particular night Buddy Rich was there with his orchestra, right?

A Yes, sir.

Q About how many people, could you roughly estimate, were present in the Bon-Soir Tear Drops that night?

A Over 200.

Q Would you say the place was packed?

A Yes, sir.

Q Would you describe to me the lighting inside the Bon-Soir Tear Drops?

A It's fairly well lit. At times, when the orchestra is on, it is lit up a little more.

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O'Donnell-cross

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Q When the orchestra is on it is actually the

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bandstand that is lit up, is that not so?

44

A Yes, sir.

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Q And the rest of the club is pretty much

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in darkness, isn't that right?

77

A It is not dark. I wouldn't say it was dark.

88

Q Would you try to read a paper inside the bon-Soir

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Tear Drops when the band is on?

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A I'll explain. There is pictures on the wall

111

off the Bon-Soir Tear Drops.

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Q My question to you, officer, was when the

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band is playing would you try to read a newspaper in the

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Bon-Soir Tear Drops?

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THE COURT: You want to rephrase that,

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could you read a paper?

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MR. EPSTEIN: I will.

188

Q When the band is playing could you read a

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newspaper in the Bon-Soir Tear Drops?

200

A Definitely.

211

Q You could?

222

A Yes, sir.

233

Q You said there were people there that night

244

taking pictures, is that correct?

25

A Yes, sir.

Q And all using flash cubes?

A Yes, most of them using flash cubes.

Q Tell me, Buddy Rich and his Orchestra, when they play would you say they are fairly loud?

A Very loud.

Q If you wanted to hold a conversation when Buddy Rich is playing wouldn't you have to be fairly close to the person whom you were talking to?

A Yes, sir.

Q In other words, if I were in the Bon-Soir Tear Drops on the night of February 12, 1973 and Buddy Rich was playing and I wanted to say something to you or you wanted to say something to me, wouldn't you have to put your mouth to my ear?

A Yes, sir.

Q That night all in all about how many pictures would you say that you or your brother officer took?

A I would say he attempted to take about six or seven, I guess.

Q Did he take about six or seven pictures?

A He snapped the flash about six or seven times, I guess.

Q Did the flash go off?

A Yes, sir.

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O'Donnell-cross

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Q Were those pictures ever developed?

A I don't know, sir.

Q In other words, you have no idea?

A No, sir.

MR.. EPSTEIN: Your Honor, I have no further questions..

MR.. PHILLIPS: Nothing further, your Honor.

THE COURT: Wait a second.

Anybody else wish to examine?

All right. Now you can say it.

MR.. PHILLIPS: We have no further questions, your Honor..

THE COURT: All right. Step down.

(Witness excused.)

THE COURT: Call your next witness.

MR.. PHILLIPS: Your Honor, the government calls Jack Fasanello.

At the same time may we also show the jury Government's Exhibit 60 in evidence?

THE COURT: Yes.

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jha. 1134
JACK FASENELLO, called as a witness
by the government, being first duly sworn, testified
as follows:

DIRECT EXAMINATION
BY MR. PHILLIPS:

Q Mr. Fasenello, by whom are you employed?

A Northeast Regional Laboratory of the
Drug Enforcement Administration.

Q In what capacity are you employed?

A Forensic chemist.

Q What are your duties?

A Analyzing drug evidence.

Q How long have you been so employed?

A Approximately three and a half years.

Q What is the extent of your education,
formal education?

A I have a Bachelor of Science degree in
chemistry and I am currently working towards a master's
degree in forensic sciences.

Q Where did you get your bachelor's degree from?

A Long Island University.

Q Where are you getting your master's degree from?

A City College.

Q During the course of your employment have you

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jha: Fasanello-direct 1135

had occasion to examine substances to determine if they were a narcotic drug?

A Yes, I have.

Q How often have you done that?

A Several hundred, probably close to a thousand times..

Q Have you had occasion to determine if the substance was heroin?

A Yes, I have.

Q How many times have you done that?

A Possibly 500.

Q Possibly how many?

A Five hundred times.

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Fasanello-direct

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Q Have you testified in court before?

A Yes, I have.

Q On this question of identifying a narcotic substance?

A Yes, sir.

Q How many times have you testified?

A About 35 or 30 times I would imagine.

Q Directing your attention to December 13, 1973, did you have occasion to go to 1113 Vincent Avenue in the Bronx?

A Yes, I did.

Q Did anybody accompany you?

A Yes. Special Agent Torreey Shutes and a New York City policeman.

Q Did anybody else from your laboratory go?

A Yes, sir, forensic chemist Michael Tsougros.

THE COURT: Mr. Phillips, before you go on, would you come up here, please.

(At the side bar.)

THE COURT: Is this witness being taken out of turn?

MR. PHILLIPS: Not really. Maybe partially, because the next witness -- no, not really out of turn, no.

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Fasanello-direct

THE COURT: All right. I am just a little lost.

MR. PHILLIPS: I will tell you. They found a powder on the kitchen table of Stasi's apartment. It turned out to be heroin. They found a powder underneath the refrigerator and it turned out to be mannitol.

(In open court.)

BY MR. PHILLIPS:

Q Mr. Fasanello, where at 1113 Vincent Avenue did you go, that is, what part of the building?

A I believe it was the top floor apartment.

Q Did you go inside the apartment?

A Yes, I did.

Q Did you have occasion to go to the kitchen?

A Yes, sir, I did.

Q What did you do once you got to the kitchen?

A There was a formica table in the kitchen which had a leaf in it, an extension leaf. We opened the table and removed the leaf and on the leaf supports -- there were eight metal supports, I believe -- we found traces of white powder which we collected.

We also searched the perimeter of the room and found some powder underneath the refrigerator, which we also collected.

Q The powder that you found on the leaf of the

11 hp3

Fasanello-direct

12 table, did you take that back to your laboratory?

13 A Yes, sir, I did.

14 Q Did you yourself conduct a test on that powder?

15 A Yes, I did.

16 Q Would you tell us what test you conducted?

17 A Infra-red spectrophotometry.

18 Q Could you tell us --

19 THE COURT: I am sorry. Would you repeat that,
100 please..

111 THE WITNESS: Infra-red spectrophotometry.

112 Q Could you tell us if you reached a conclusion
113 as to what that substance was?

114 MR. FISHER: Object to the conclusion, if your
115 Honor please, and ask for a voir dire.

116 THE COURT: You have the right to a voir dire
117 on an expert witness. Go ahead.

118 VOIR DIRE EXAMINATION

119 BY MR. FISHER:

120 Q Mr. Fasanello, as a result of that test or any
121 test that you conducted on this substance, were you able to
122 determine when that substance was first placed in the area
123 you found it or how old the substance was?

124 MR. PHILLIPS: Your Honor, I object.

125 THE COURT: This is not a voir dire.

1 hp4: Fasanello-direct

2 MR. FISHER: May I make an offer at the side bar,
3 your Honor?

4 THE COURT: I understood when you asked for a
5 voir dire that you wanted to go to his qualifications as
6 an expert.

7 MR. FISHER: I would submit, your Honor, that if
8 in fact there is no way of knowing when this powder got here
9 it's irrelevant by reason of remoteness.

10 THE COURT: That is not voir dire. You get
11 to that on cross.

12 MR. FISHER: Before the conclusion is announced,
13 if your Honor please.

14 THE COURT: No. I will permit it.

15 Go ahead, Mr. Phillips.

16 MR. DOWD: Your Honor, I would like to question
17 him.

18 THE COURT: All right. Mr. Dowd.

19 VOIR DIRE EXAMINATION

20 BY MR. DOWD:

21 Q Mr. Fasanello, you say that you are working
22 towards a Master's in Chemistry?

23 A A Master's in Science, forensic sciences.

24 Q And you have examined numerous samples of heroin?

25 A Yes, I have.

11 hp5 Fasanello-direct

12 Q Can you determine heroin by just looking at it?

13 A No, sir.

14 Q In other words, scientifically it would be
15 impossible for you to determine whether a substance is
16 heroin from just visual observation?

17 A I would agree with that.

18 Q Could you tell if a substance is heroin by
19 tasting it?

20 A I wouldn't know.

21 Q Would you be able to tell to a reasonable degree
22 of scientific certainty that a substance was heroin by
23 tasting it?

24 MR. PHILLIPS: Your Honor, I don't think this is
25 proper voir dire either.

MR. DOWD: I think it goes to his qualifications.

THE COURT: This is voir dire. He said he
wouldn't know. You asked the same question. I assume
you are going to get the same answer.

Q That is not one of the tests you would make as
a chemist and a scientist of heroin, is it, tasting it?

A Could you put that in a single negative?

Q Is that one of the tests you would make to
determine heroin, tasting it?

A No, it's not.

hp6

Fasanello-direct

Q Is it a recognized scientific test?

A Not by our laboratory.

MR. DOWD: No further questions.

THE COURT: All right, Mr. Phillips.

BY MR. PHILLIPS:

Q Mr. Fasanello, did you reach a conclusion as to what that substance was that you found on the leaf of the table?

A Yes, sir, I did.

Q What was it?

A It was heroin or it contained heroin.

Q The substance that was found under the refrigerator, was that also examined at your laboratory?

A Yes, sir, it was.

Q Was that examined by this other chemist named Tsougros?

A Yes, it was.

Q What was that determined to be?

MR. FISHER: Objection, if your Honor please.

THE COURT: Sustained. Did you also conduct any tests on the white powder found under the refrigerator?

THE WITNESS: I did conduct some tests on it, sir.

Q What tests did you conduct on it?

1 hp7 Fasanello-direct

2 A A microscopic examination.

3 Q A microscopic examination?

4 A Yes, sir.

5 Q Did you determine or reach a conclusion as a
6 result of your examination as to what that substance was?

7 A Well, based on my microscopic observation, there
8 were strong indications that the material was mannitol.

9 Q What is mannitol?

10 A Mannitol is a polyhydric alcohol.

11 MR. FISHER: If your Honor please, I move to
12 strike the answer. A strong indication is not an opinion
13 with a reasonable degree of scientific certainty, which
14 is the only opinion I submit this witness is allowed to
15 give..

16 THE COURT: I know. I will let it stand right
17 now..

18 Q Is mannitol a compound?

19 A Yes, sir, it is.

20 Q How is it related to mannite?

21 MR. WARNER: Objection.

22 THE COURT: If he knows he can answer.

23 Q If you know.

24 MR. WARNER: Other than that, it assumes a fact
25 that is not in evidence and it is not related at all.

1 hp8

Fasanello-direct

2 THE COURT: Is it related to mannite? Answer
3 that first..

4 THE WITNESS: Yes, it is.

5 Q Could you tell us how?

6 A Mannitol is the major component of mannite.

2 7 Q I believe you said you have examined substances
8 to determine if the substance contained heroin approximately
9 500 times..

10 Of those 500 times, Mr. Fasanello, could you
11 tell us approximately how many times the substance that
12 you did examine in fact did contain heroin?

13 A I don't really --

14 MR. FISHER: Objection, if your Honor please.

15 THE COURT: Yes. I will sustain the objection.

16 Q Have you examined substances approximately 500
17 times to determine if they contained heroin?

18 A Yes, sir.

19 Q Of those 500 times how many times did you
20 ascertain that the substance did in fact contain heroin?

21 MR. FISHER: Objection, if your Honor please.

22 THE COURT: It's the same question. The
23 same ruling.

24 Q Of the 500 times that you examined heroin, how
25 many times, Mr. Fasanello, did you ascertain whether

1 hp9

Fasanello-direct

2 mannitol or a compound thereof was present in the sub-
3 stance?

4 MR. DOWD: Objection, your Honor.

5 MR. ELLIS: Objection.

6 THE COURT: That is the same objection.
7 Same ruling..

8 MR. PHILLIPS: May we approach the side bar, your
9 Honor?

10 THE COURT: No, I don't think it's necessary.

11 Q Is mannite manufactured in this country?

12 MR. FISHER: Objection, if your Honor please.

13 THE COURT: No. If he knows he can answer.

14 A Mannite isn't, to the best of my knowledge.

15 Q Where is mannite manufactured?

16 THE COURT: No, no. I assume you have an
17 objection..

18 MR. FISHER: Yes, your Honor.

19 THE COURT: All right. That is sustained.

20 Q Is mannite sold in this country?

21 MR. FISHER: Objection, if your Honor please.
22 This is a chemist.

23 THE COURT: If he knows.

24 Q Is mannite sold in this country, Mr. Fasanello?

25 A Mannite --

1 hp10

Fasanello-direct

2 MR. WARNER: Your Honor, if --

3 Q Would you answer the question, please?

4 THE COURT: Hold on. There is another ob-
5 jection..

6 MR. WARNER: May I approach the side bar?

7 THE COURT: Yes, sure.

8 (At the side bar.)

9 MR. WARNER: Your Honor, unless this witness
10 has purchased or been present at the time that mannite was
11 sold in this country there is no way that he can give this
12 answer. It's just going to be a prelude to giving an
13 answer which he is not qualified to give and then later
14 revealing that he is not qualified to give it in the first
15 place.16 If he ever purchased it, fine. If he didn't or
17 he wasn't present --18 MR. PHILLIPS: I would like to go back a minute.
19 I intend to ask this witness how many times he has examined
20 a substance that he suspected of containing heroin. He
21 has already answered that question, five hundred times.22 I then intend to ask him, "How many times did
23 you in fact conclude that the substance contained heroin?"24 His answer is going to be "Approximately 400
25 or 80 per cent of the time."

11 hp11: Fasanello-direct

12 MR. WARNER: That is irrelevant.

13 MR. PHILLIPS: I then intend to ask the witness,
14 "Of those 400 times that you found heroin to be present
15 in the substance how many times did you find that the
16 diluent, the mixing agent, was mannite?"

17 I think that is relevant in this case because
18 that is what this whole case is about. It's about mannite.
19 We already have mannite in evidence.

100 We have to establish, to show knowledge on the
111 part of Mr. Ceriale, that mannite is used as a mixing agent
122 for heroin.

123 MR. WARNER: That does not show any knowledge
144 on the part of Mr. Ceriale, No. 1.

155 No. 2, the fact that on 400 separate occasions
166 mannite was found does not prove that mannite was used in
177 this case.

188 MR. PHILLIPS: Before I was interrupted by Mr.
199 Warner I wanted to tell your Honor the basis of my
200 questioning, that is, that mannite is not manufactured in
211 this country, it is manufactured in Europe. It's
222 legitimate purposes in this country are pharmaceutical.
233 It does not have legitimate purposes obviously for mixing
244 it with heroin, but it does have legitimate purposes on
255 Europe, such as a laxative.

hpl2

Fasanello-direct

I think this is all relevant in terms of the amount of heroin that Mr. Warner's client was selling.

THE COURT: Mannite.

MR..PHILLIPS: I mean mannite. I am sorry.

THE COURT: As to whether it's sold in this country, I believe it is sold in this country and it's possessions.

MR..PHILLIPS: Yes. We don't dispute that.

THE COURT: You know that?

MR..PHILLIPS: That is what the answer is going to be..

THE COURT: It's certainly not restricted. Mannite is used as a laxative particularly among the Spanish-speaking peoples.

For example, if you went to Puerto Rico and had difficulties, instead of getting Citric of Magnesia you would get mannite.

If that is what he is bringing out I don't see that there is any objection. You could buy it in any pharmacy which caters to Spanish-speaking people. All right?

MR..WARNER: All right, fine.

THE COURT: I didn't know if you knew that.

MR. WAPNER: I was aware of that, your Honor.

1 hpl3 Fasanello-direct

2 If what he is bringing out is the fact that this material,
3 mannite, can be purchased in a pharmacy without a pres-
4 cription, if that is what you are bringing out, that it's
5 legal to purchase it in a pharmacy without a prescription --

6 MR. PHILLIPS: Yes. I am not disputing that
7 you can purchase it in a pharmacy.

8 MR. WARNER: That is one thing. But to say on
9 400 occasions that he --

10 THE COURT: We will take one step at a time.

11 MR. PHILLIPS: We haven't shown yet that it is
12 a diluent to heroin. We haven't shown that at all.

13 THE COURT: You have shown that Stasi has
14 mixed heroin with mannite.

15 MR. PHILLIPS: But we are not required to stop
16 with Stasi's testimony. We can have an expert testify
17 to the same thing.

18 MR. WARNER: No. The reason is that the question
19 here is not whether Stasi was appropriately mixing mannite
20 with heroin, but whether in fact it was, and the fact
21 that it may be a diluent, that doesn't mean anything.

22 THE COURT: Supposing it was milk sugar.

23 MR. WARNER: Suppose he mixed salt with heroin.

24 MR. PHILLIPS: The point is that we are entitled
25 to put an expert on the stand to testify in addition to

hp14

Fasanello-direct

Stasi what the uses of mannite are with respect to heroin and that it is a common diluent.

MR. CURPAN: Particularly that mannite is found in heroin that he has analyzed. If it were milk sugar we would be entitled to do the same thing.

MR. WARNER: No. The fact that it has been found --

THE COURT: Let me let the jury go out to lunch. Do you expect to be much longer with this witness?

MR. PHILLIPS: No.

(In open court.)

THE COURT: Ladies and gentlemen, everytime we go to the side bar we have what is called a legal argument. Actually, it's time for lunch, just about, and I would suggest we take our luncheon break. We can take care of this problem without your presence.

(Jury left the courtroom.)

1 ppl

5a 2 MR. PHILLIPS: Your Honor, may I be heard for
3 a minute?

4 THE COURT: Surely.

5 MR. PHILLIPS: My understanding two days ago --
6 and I would be perfectly happy if any defense counsel
7 corrects me -- was that Mr. Lopez informed me that all
8 defense counsel, with the exception of Herbert Siegal
9 were willing to stipulate to whatever Mr. Fasanello's
10 testimony would be regarding the taking out of the powder
11 from the Hansen apartment.

12 Today, Mr. Fisher asked voir dire questions and
13 Mr. Dowd asked voir dire questions, and I submit that
14 counsel are playing games with the Court.

15 MR. FISHER: Your Honor, I object to that.

16 THE COURT: Now, hold on, Mr. Fisher. Sit down.
17 This case is a constant surprise, not only to me but to you
18 and everybody else.

19 MR. PHILLIPS: In light of that, your Honor,
20 I would like to ask counsel on the circuit if they are
21 going to require Mr. Tsougros to appear here as a witness
22 or if they are willing to stipulate to his testimony, which
23 would be testimony as to the substance found on the refrigerator
24 or being manitol.

25 THE COURT: Mr. Siegal?

1 pp2

2 MR. SIEGAL: The extent of the stipulation are
3 you talking about?

4 THE COURT: No. Do you want the other chemist
5 to testify that the substance was manitol? Do you want to
6 stipulate to that?

7 MR. SIEGAL: Well, the trouble is, even if I
8 stipulated to that, I would still want to cross-examine
9 him on another phase of his testimony.

10 THE COURT: This witness or the other one?

11 MR. SIEGAL: This or the other. I don't know
12 yet. But even if I stipulated, even if I stipulated he
13 would testify to that, I would want to cross-examine this
14 witness, who says he found something, is that right, in
15 December of 1973. If this witness is the one who said he
16 found heroin in December of 1973 up in the Bronx, this is
17 the one I want to cross-examine.

18 THE COURT: You want to cross-examine the witness
19 who will say that up in the Bronx he found manitol at the
20 same time?

21 MR. SIEGAL: At the same time?

22 THE COURT: Yes.

23 MR. SIEGAL: We will stipulate to that and to tha
24 only.

25 MR. PHILLIPS: Does that go for all counsel?

11 pp3

22 Mr. Siegal said "we."

33 THE COURT: No.

44 Mr. Fisher, I believe you will not so stipulate?

55 MR. FISHER: I will not stipulate.

66 THE COURT: Mr. Warner, you will not so stipulate?

77 MR. WARNER: No.

88 THE COURT: All right. That ends that.

99 MRS. ROSNER: Your Honor, during the morning
100 recess Mr. Phillips and Mr. Curran were kind enough to show
111 me a three-page inventory purporting to show conversations
122 on tape of the witness Barnaba. I would ask, your Honor,
133 that that paper be marked as an exhibit, or at least a copy
144 of it, for purposes of the record.

155 THE COURT: Give me a copy of it.

166 MR. PHILLIPS: Your Honor, we gave your Honor's
177 chambers a copy, the same copy, as a matter of fact, a week
188 or so ago, but we will hand it up again to your Honor.
199 I would like to have it back at the lunch hour, because
200 I would like to correct the reels that appear there.

211 Mr. Fisher specifically has asked to listen to
222 or have the tapes, some of the tapes that appear on there,
233 and we have no objection, and he wants those today, but
244 I need that document.

25 THE COURT: All right. This is yours. Hold

11 pp4

22 on to it.

33 MRS. ROSNER: Your Honor, may I note that that
44 paper has circled on it the numbers of tapes which the
55 government purports to have made available at some earlier
66 time. Apart from the circled exhibits, there are notations
77 on that paper which indicate the content of Barnaba's
88 conversation on other tapes, and those contents include
99 conversations about defendants on trial and specifically
100 the defendant Inglese, which are not circled, and by the
111 government's explanation were never made available.

122 MR. PHILLIPS: Since that statement is altogether
133 false, your Honor, I would like to have this document marked
144 as an exhibit. There is nothing on this document that
155 indicates the contents of any of Barnaba's conversations.

166 MRS. ROSNER: I understood, your Honor, from
177 conversations with Mr. Curran that notations on that paper
188 purport to be conversations of who are discussed on the tapes
199 if not who the participants themselves are.

20 MR. CURRAN: I made no such statement, your
21 Honor.

22 THE COURT: All right. Have it marked as a
23 Court's exhibit.

24 What was the next Court's exhibit?

25 MR. ELLIS: Your Honor, since the slight to-do

11 pp5

12 this morning, I have ascertained that Mrs. Everett from my
13 office heard approximately six Barnaba tapes. I will
14 have a more complete list by the end of the lunch recess
15 of all the Barnaba tapes that were heard by her this
16 morning..

17 THE COURT: All right. It's lunchtime.

18 (Court's Exhibit 55 marked for
19 identification.)

20 (Luncheon recess.)

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A F T E R N O O N S E S S I O N

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2.00 P.M.

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(Jury not present.)

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MR. FISHER: Your Honor, as a predicate for this, I would like the Court to be aware of something I think it is fairly clear, and that is the tremendous importance of 3500 material to a defendant in a case like this.

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As your Honor can well tell from the cross-examination of Mr. Stasi, certainly my cross and most of the cross of every defendant who cross-examined was based on the material gleaned from that 3500 material.

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In a case like this, that is about all we've got.

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Now, in that context, if your Honor please, I would ask the Court to ask Mr. Phillips to produce Sergeant O'Boyle tomorrow morning so that I may inquire of Mr. O'Boyle whether or not any tape recordings of the witness Barnaba are in existence of conversations relating to any of the defendants in this case or any of the co-conspirators that have been denominated as such.

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25

MR. PHILLIPS: Your Honor, without addressing myself or responding to Mr. Fisher's request, it seems to me that we ought to take this matter up at 4.30 or

some time thereafter, after the jury has been excused, because we have a jury waiting, and we had a jury waiting for one hour this morning.

MR. FISHER: I have no objection to that, your Honor.

MR. ELLIS: Your Honor, could I just leave that part of the record and talk about the tapes that were listened to Mrs. Everett in my office?

Mrs. Everett listened to the following Barnaba tapes: M-160; M-167; R-131; M-66; M-121 -- there looks to be a second "M" at the end of that. In addition, she listened to R-274-A, the debriefing tape.

I am advised that she was also initially given two Barnaba-Tolopka tapes, A-486 and C-417, and before she had an opportunity to listen to those tapes they were removed by Mr. Phillips, who advised her that they related to Tolopka; they were not 3500 material as to Mamone.

1
2 Obviously this falls far short of the two or
3 three pages of Barnaba tapes we are now advised exist.

4 Your Honor, I submit the only conclusion that
5 one could draw from this is that the government is not
6 competent to judge what is Brady material as to any de-
7 fendant. They don't know our theory of defense any
8 more than we know their theory of prosecution. As Mr.
9 Curran so eloquently put it last week, we learn about
10 their case as the evidence unfolds.

11 Your Honor, I submit that we are entitled to
12 hear each of the three pages of tapes existing between
13 Barnaba and any person connected with this case and
14 we will determine for ourselves the use which the defense
15 can make of that material.

16 MRS. ROSNER: Your Honor, similarly, to complete
17 the record, may I indicate that Mr. Oppenheimer is in
18 court this afternoon. I discussed the matter with him
19 to refresh my own recollection as to what my instruc-
20 tions to him had been, and he confirms what my initial
21 impression was, and that is that we sought not only
22 tapes applying to MR. Inglese but tapes that might apply
23 to all defendants. At that time we had already under-
24 taken to duplicate the tapes for everyone else.

25 At that time Mr. Phillips said he would not

1 pa2

2 make available to us tapes to which other co-defendants
3 might be entitled.

4 Following that occasion, your Honor, we had
5 the January 7th pretrial conference, and during the
6 course of that conference, Mr. Oppenheimer indicated on
7 the record at page 19 that we requested all electronic
8 surveillance of the defendant Inglese and the govern-
9 ment had represented -- and they did not deny it at the
10 conference -- that all such electronic surveillance had
11 been turned over.

12 Perhaps there is some semantic difficulty,
13 your Honor; there was misunderstanding, but we take the
14 position now, as I believe we always have, that any Kellogg
15 transmission or any other kinds of recording in which Mr.
16 Inglese is mentioned is either in the nature of 3500
17 material because it relates to the testimony at trial or
18 is Brady material, your Honor, and we renew our request
19 for such material.

20 THE COURT: All right.

21 MR. WARNER: Your Honor, if there are no
22 further applications in regard to 3500 material I would
23 like to address myself to the matter we discussed at the
24 side bar briefly.

25 MR. FISHER: Well, there is --

2 THE COURT: Can't we take this up at 4:30?

3 MR. FISHER: No, your Honor.

4 My understanding is that Mr. Phillips will make
5 available to me -- and, I assume, any other counsel in
6 this case -- all the tapes that have not been submitted
7 to your Honor this afternoon.

8 MR. PHILLIPS: Take it up at 4:30, your
9 Honor, is the suggestion of the government.

10 MR. WARNER: Your Honor, I would like to
11 avoid having to leap up every time the word "mannitol"
12 or "mannite" is mentioned. We were discussing at the
13 side bar with your Honor the question of the testimony
14 of the witness on the stand.

15 I understand it is Mr. Phillips' position that
16 he wishes to introduce through this witness the fact
17 that mannite is available on a nonprescription basis from
18 the drugstores in the New York City area If I am
19 correct that he wishes to introduce that fact I have no
20 objection to that fact coming in, but as far as anything
21 else in terms of quantities that are available or whether
22 on 400 separate occasions in the past there was found
23 mannitol in compounds containing heroin, that I don't
24 think has any relevance or bearing upon the case
25 that we are involved in now.

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MR. PHILLIPS: If your Honor please, I don't know whether you wanted to hear from the government, but it is my intention --

THE COURT: No, I don't think we need to now. Bring in the jury.

JACK FASANELLO resumed.

(Jury present.)

THE COURT: All right, Mr. Phillips.

DIRECT EXAMINATION CONTINUED

BY MR. PHILLIPS:

Q Mr. Fasanello, I believe you testified this morning that you have examined a substance that you suspected to contain heroin approximately 500 times in your career, is that correct?

A That's correct.

THE COURT: Hold on. There is a question outstanding before the witness just before we broke for lunch. I will bet the reporter doesn't have the question.

The question was, Mr. Fasanello, can you purchase or can anyone purchase mannitol or mannite in the United States?

THE WITNESS: Mannitol can be purchased in the United States. As far as mannite goes, I don't

1 jha Fasanello-direct 1161
2 think there is any law against it, but I wouldn't know
3 if it can be purchased or can't.

4 MR. WARNER: Your Honor, he said, "I
5 wouldn't know"?

6 THE COURT: Read back the answer.

7 (Answer read.)

8 Q Mr. Fasanello, let me ask you this other
9 question again. I believe you testified this morning
10 that you have examined during your career a substance on
11 approximately 500 occasions that you suspected to contain
12 heroin, is that correct?

13 A That's correct.

14 Q Of those 500 times how many occasions did you
15 in fact conclude that the substance contained heroin?

16 MR. ELLIS: Objection, your Honor.

17 THE COURT: No, I will permit it.

18 Q Would you answer the question, please?

19 A I would say approximately 80 per cent.

20 Q In other words, approximately 400 times?

21 A Yes.

22 Q Of those times which you found heroin to be
23 present in the substance would you tell us what the
24 diluent was or the percentage of times that you found the
25 diluent to be mannitol or mannite?

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Fasanello-direct

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MR. ELLIS: Objection, your Honor.

THE COURT: Overruled.

A Mannitol is found in approximately 35 or 40 per cent of the heroin samples in New York.

Q Are there other diluents as well?

A Yes.

Q Can you tell us what they are?

A Quinine, lactose, dextrose.

Q Is it fair to say that mannite is found more often than the other diluents you just mentioned?

MR. WARNER: Objection.

THE COURT: Sustained. He said Mannitol.

Q Is mannitol found --

THE COURT: Tell us how many times you find quinine, what percentage?

THE WITNESS: I would say quinine is a greater percentage, possibly 50 per cent of the samples.

Q Quinine is about 50 per cent?

A Yes.

Q And mannitol is approximately 35 to 40 per cent?

A Yes.

Q And the others are the rest, is that correct?

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Fasanello-direct

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A Well, many times there is a combination of
3 them.

4

MR. PHILLIPS: Your Honor, if I may have a
5 minute, I would like to confer with defense counsel,
6 Mr. Fisher specifically, and Mr. Lopez. I think then
7 I will have no further questions of this witness.

8

THE COURT: Sure, go ahead.

9

(Pause.)

10

BY MR. PHILLIPS:

11

Q Mr. Fasanello, the substance that was found
12 underneath the refrigerator, do you recall that, in this
13 apartment at 1113 Vincent Avenue?

14

A Yes, I do.

15

Q That was examined by another chemist, is that
16 correct?

17

A Yes, it was.

18

Q Who was that?

19

A Michael Tsougros.

20

Q Do you know what test he used on that sub-
21 stance?

22

A Infrared spectrophotometry.

23

Q I think you also said that you used a
24 separate test, a microscopic test.

25

A Yes, sir, I did.

1 jha Fasanello-direct-cross 1164

2 Q Do you know what conclusion he reached as to
3 what the substance was?

4 A Yes, sir, I do.

5 Q What was it?

6 A The substance was mannitol.

7 Q The apartment at 1113 Vincent Avenue was where
8 in that building?

9 A I believe it was on the top floor.

10 MR. PHILLIPS: I have no further questions,
11 your Honor.

12 CROSS EXAMINATION

13 BY MR. SIEGAL:

14 Q Did I understand you to say that you found
15 some traces of heroin up at 1113 Vincent Avenue?

16 A Yes, sir.

17 Q In whose apartment?

18 A I don't know who the apartment belonged to.

19 Q Do you have any idea?

20 A No, sir.

21 Q You just walked into an apartment?

22 A I was taken there by Special Agent Torrey
23 Shutes.

24 Q Who was there when you got there, if anybody?

25 A A man about 30 years old, I would say.

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Fasanello-cross

1165

2 Q Thirty years old?

3 A Twenty-five or 30.

4 Q Was he an agent?

5 A No. He was living in the apartment at the
6 time.

7 Q Was his name Stasi or what?

8 A The agents did not tell me the guy's name.

9 Q You made an examination of the apartment?

10 A The kitchen.

11 Q And you found some traces?

12 A Yes, sir, I did.

13 Q Where did you find them?

14 A The leaf of the kitchen table was removed and
15 on the leaf supports there were traces of white powder.

16 Q When was this that you were up there and found
17 these traces?

18 A I think it was December 13th.

19 Q Of what year?

20 A 1973.

21 Q 1973, December 13th?

22 MR. SIEGAL: Mr. Phillips, what is the
23 date of this indictment?

24 MR. PHILLIPS: Your Honor, I object to this
25 in front of the jury. If Mr. Siegal wants to talk to

1 jha Fasanello-cross 1166

2 me --

3 THE COURT: Go ahead, just develop the
4 facts.

5 MR. SIEGAL: Can't we take judicial notice
6 of when this indictment was filed here?

7 THE COURT: Yes.

8 MR. SIEGAL: What is the date?

9 THE COURT: I am not going to do it now,
10 Mr. Siegal. At the right time I will do it.

11 MR. PHILLIPS: Mr. Siegal, can I see you for
12 a minute?

13 MR. SIEGAL: Yes, sir. Yes, sir.

14 (Pause.)

15 MR. PHILLIPS: Your Honor, Mr. Siegal and
16 I have agreed and stipulated between us the date of the
17 indictment in this case was December 6, 1973, and have
18 further stipulated the apartment that Mr. Fasanello makes
19 reference to was Frank Stasi's apartment or the apartment
20 that he was living in and testified about.

21 MR. SIEGAL: Thank you.

22 BY MR. SIEGAL:

23 Q Can you tell us from your experience when the
24 traces of heroin were put into that apartment?

25 A No, I can't.

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Fasanello-cross

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Q Do you know whether or not it was put there
the day before you got there?

A No, I don't.

Q Or two days before?

A No.

Q Are you in a position to tell us that it
wasn't there in July of 1972?

A Could you rephrase that, please?

Q Are you in a position to tell us that the
traces that you found were not in that apartment in July
of 1972?

A I still don't understand it. Could you put
it in single negative?

THE COURT: Let me do it for you.

Q Let me ask you this question: can you tell
us whether or not those traces were in that apartment in
July of 1972?

A No, I cannot.

Q Can you tell us whether they were there in Oc-
tober of 1972?

A No, I cannot.

Q Can you tell us whether they were there in
July of 1971?

A No, I cannot.

MR. SIEGAL: Your witness.

THE COURT: Anybody else want to inquire?

CROSS EXAMINATION

BY MR. FISHER:

Q Mr. Fasanello, in the kitchen in the apartment that it has been stipulated belonged to Mr. Stasi did you notice a pantry?

A Yes, sir, I did.

Q Did you make an inspection of the pantry?

A Yes, sir, we did.

Q Did you obtain any sample of any suspected substance from the pantry?

A Yes, sir.

Q Did you test that substance?

A No, sir, we did not.

Q What was the amount of the substance that you withdrew from the pantry?

A We just took dust samples. I didn't weigh it.

Q These dust samples, did you use a vacuum cleaner?

A Yes.

Q The dust samples that were extracted from the pantry were not tested, is that right?

A That's correct.

Q What was the color of the sample that was removed from the pantry?

1 hp2

Fasanello-cross

2 A I don't remember.

3 Q You were, however, specifically directed, were
4 you not, to take a sample from the pantry?

5 A Yes, sir.

6 Q And were you specifically directed not to test
7 that sample?

8 A No, sir.

9 Q That was your own decision?

10 A Yes.

11 Q Was that decision arrived at upon your tentative
12 conclusion that test would be negative?

13 A No, sir.

14 Q Or that it would be positive?

15 A No, sir.

16 Q You just didn't do it?

17 A Yes, sir.

18 Q In milligrams or grams or whatever metric weight
19 is most appropriate, would you please tell us the weight
20 of the substance that you removed from the pantry?

21 A I said we didn't weigh it.

22 Q You didn't weigh it?

23 A We did not.

24 Q Was it a sufficient weight so that it could have
25 been tested?

1 hp3 Fasanello-cross

2 A Tested or weighed?

3 Q Tested.

4 A It could have been tested, yes.

5 Q With regard to the substance that was removed
6 from the area of the board in the table, what was the
7 weight of that substance?

8 A It was not weighed.

9 Q It was not weighed?

10 A That's right.

11 Q But it was tested?

12 A Yes, sir.

13 Q Can you approximate for us how much it weighed?

14 A 25 milligrams.

15 Q A small amount?

16 A Yes..

17 Q In dealing with small amounts you will agree,
18 will you not, that special care needs to be taken during
19 the testing procedures?

20 A Yes, sir.

21 Q And that in fact often special tests are em-
22 ployed?

23 A Yes..

24 Q Are you familiar with the modified Takamori
25 spectrophoto flourometric analysis?

1 hp4

Fasanello-cross

2 A I have heard of it, yes.

3 Q Did you employ it?

4 A No, sir..

5 Q Are you familiar with the semi-agglutination in-
6 hibition test?

7 A Yes, sir.

8 Q Was that test employed?

9 A No, sir, it was not.

10 Q You agree, however, that those tests are frequent-
11 ly used by your laboratory when analyzing small quantities
12 of suspected powder?

13 A No, sir, I will not.

14 Q You will not agree?

15 A No..

16 Q Isn't it a fact, sir, that in cases where you
17 are dealing with less than 5 milligrams of a suspected
18 substance the modified Takamori spectrophoto flourometric
19 analysis has been used consistently by your laboratory?

20 A No, sir, that is not correct.

21 Q How many times, if ever, have you employed the
22 modified Takamori spectrophoto flourometric analysis?

23 MR. PHILLIPS: Objection, your Honor.

24 THE COURT: I will permit it.

25 A Never..

1 hp5

Fasanello-cross

2 Q Never?

3 A Never..

4 Q Have you ever used the hemo agglutination
5 inhibition test?

6 A Not in my laboratory.

7 Q Are you familiar, sir, with neutron activation
8 analysis?

9 A Vaguely..

10 Q Do you know what it's about?

11 A Yes, sir.

12 Q Are you familiar with atomic absorption tests?

13 A Yes..

14 Q Do you know what that is about?

15 A Yes, sir.

16 Q Do you know a man named Dr. Pro?

17 A No..

18 Q Do you know of him?

19 A No, sir.

20 Q Do you know a man named Brunell?

21 A No, sir.

22 Q Do you know of him?

23 A No, sir.

24 Q In any event, do you know that one of the pur-
25 poses of --

1 hp6 Fasanello-cross

2 MR. PHILLIPS: Objection, your Honor, as ir-
3 relevant. I think we are getting far afield here.
4 These particular tests have got nothing to do with this
5 witness's testimony.

6 THE COURT: Let me hear what the question is.

7 MR. PHILLIPS: Or subject matter.

8 THE COURT: Let me hear what the question is.

9 Q Are the tests, the neutron activation analysis
10 and atomic absorption tests, recognized as valid tests
11 in your lab?

12 MR. PHILLIPS: Your Honor, objection. This
13 whole area is completely different from the subject matter
14 of this witness's testimony.

15 THE COURT: I know. I will permit it.

16 A We do not have the equipment for it, so I don't
17 think it's recognized as anything in our laboratory.
18 Not much thought is given to it.

19 Q You are aware from your readings -- you do
20 read in the field of forensic chemistry, is that right?

21 A Yes, sir, I do.

22 Q And some of your expertise has been arrived at
23 as a result of conversations with your associates in the
24 lab, isn't that right?

25 A Yes, sir.

1 hp7

Fasanello-cross

2 Q In fact, it's as a result of this reading and
3 these conversations that you have been able to give us
4 the various opinions that you have given us today, is that
5 right?

6 A Yes..

7 Q And it is as a result of those readings and those
8 discussions, is it not, that you have become aware of
9 neutron activation analysis and atomic absorption tests?

10 A Yes, sir.

11 Q And you know from those discussions and readings
12 that these tests have been used and relied upon by govern-
13 ment chemists, isn't that right?

14 MR. PHILLIPS: Your Honor, I object. This is
15 misleading because it has nothing to do with the identifi-
16 cation of a substance.

17 MR. FISHER: I am about to get there, your
18 Honor.

19 THE COURT: I will permit it.

20 A Can you tell me for what purpose they were
21 relied upon?

22 Q Do you know whether or not they have been relied
23 upon to prove common source?

24 A I think they have been tried. I don't know if
25 they have been relied upon.

hp8

Fasanello-cross

Q Specifically, relied upon to show common source of cocaine samples.

A I don't know anything about the cocaine.

Q Is there a difference, sir, between mannitol and mannite?

A Mannitol is the major ingredient in mannite.

Q What is the difference?

A Well, mannitol is a pure polyhydric alcohol. Mannite is a natural product taken from a plant and it contains about 60 per cent mannitol plus a couple of other sugars.

Q In terms of physical appearance what is the difference between mannitol and mannite?

A Very similar.

Q They look about the same?

A Yes, sir.

Q Is there done to mannitol to turn it into mannite?

A No, sir.

Q And you have identified, you and your associate, Mr. Tsougros --

A Tsougros.

Q That is an appropriate name, isn't it?

(Continuing) -- have concluded that the substance under testing was in fact mannitol, is that right?

A That it contained mannitol yes.

1 hp8a

Fasanello-cross

2 Q That it contained mannitol?

3 A Yes.

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1 ppl Fasanello-cross 1176
2 Q And can you give us an opinion, within a reason-
3 able degree of scientific certainty, as to whether or not
4 the substance was in fact mannite?

5 A We did not test for other substances in it.

6 Q Do you cannot give us an opinion?

7 A No; I cannot.

8 MR. FISHER: No further questions.

9 THE COURT: Does anyone else have any further
10 cross-examination?

11 CROSS EXAMINATION

12 BY MR. DOWD:

13 Q I have forgotten your name --

14 A Fasanello.

15 Q Mr. Fasanello, you are employed by the Federal
16 Government?

17 A Yes.

18 Q And you told me earlier that you would not be
19 able to determine by visual examination whether a substance
20 was heroin or not?

21 A That's correct.

22 Q Well, assume this: if an agent came to you
23 and told you that he had a substance which was white,
24 a white crystalline powder, and told you it was heroin,
25 an agent without a chemical background or a background in

1 chemistry, would you be able to or would you state to a
2 reasonable degree of scientific certainty that that was
3 heroin?
4

5 MR. PHILLIPS: Objection.

6 THE COURT: I will sustain it. Let's try and
7 re-form it.

8 MR. DOWD: Okay.

9 Q Let me ask you: could you say to a reasonable
10 degree of scientific certainty that a substance was heroin
11 based on the statement of a person untrained in chemistry
12 that it was heroin?

13 MR. PHILLIPS: Objection.

14 THE COURT: I will sustain that.

15 MR. DOWD: May I approach the side bar, your
16 Honor?

17 THE COURT: No, Mr. Dowd.

18 (To witness) You are a chemist, right?

19 THE WITNESS: Yes; I am.

20 THE COURT: And you are an expert in deter-
21 mining whether a substance is heroin or not?

22 THE WITNESS: Yes, sir.

23 THE COURT: All right. If you take a look at
24 something that is a white powder, merely by a visual look
25 at that, can you tell whether it is heroin or contains

pp3

Fasanello-cross

heroin?

THE WITNESS: No, sir.

Q In other words, you are saying you would have to perform certain scientific tests?

A Yes.

Q To determine whether it was heroin?

A Yes.

Q Otherwise in your opinion it could be any number of substances; is that correct?

A That's correct.

MR. DOWD: No further questions.

THE COURT: Does anyone else wish to cross-examine?

All right. Would you be good enough to step down.

(Witness excused.)

THE COURT: Call your next witness, please.

MR. PHILLIPS: Government calls Mario Figueroa.

1 pp4

2 M A R I O F I G U E R O A, called as a witness on
3 behalf of the government, being first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. PHILLIPS:

7 Q Mr. Figueroa, you will have to speak into that
8 microphone in front of you. Do you see it? You have to
9 speak into that so that everybody can hear you.

10 By whom are you employed?

11 A By Burns Security Service.

12 Q Burns Security Service? You can't nod your
13 head. You have to say something, so the reporter can take
14 it down. Do you understand that?

15 THE COURT: All right. Let's indicate the
16 witness said "Yes" both times.

17 Q Mr. Figueroa, what is your present assignment?

18 A Chase Manhattan Bank.

19 Q Do you work there as a security guard?

20 A As a security guard; yes, sir.

21 Q And at which branch do you work?

22 A Branch 73, Pelham Bay branch.

23 Q Can you tell us the exact address of that
24 particular bank?

25 A 3217 Westchester Avenue, the Bronx.

1 pp5

Figueroa-direct

2 Q How long have you worked there?

3 A Since June 9, 1969.

4 Q Are you still working there?

5 A Yes, sir.

6 Q Have you worked there continuously since June
7 of 1969?

8 A Yes, sir, until some time until February 2nd,
9 1973. Then I had to be off for a while.

10 Q How long were you off?

11 A Until August 6, 1973.

12 Q So that between June of 1969 and February of
13 1973 you worked continuously; is that correct?

14 A Yes, sir.

15 Q Let me show you, Mr. Figueroa, what has been
16 marked Government's Exhibit 21 in evidence and ask you if
17 you can identify the individual who appears on the lefthand
18 side of that photograph with the number 1.

19 A Yes, sir.

20 Q Who is that?

21 A This is one of our customers.

22 Q Do you know what his name is?

23 A No, sir.

24 MR. PHILLIPS: Your Honor, for the record this
25 individual has previously been identified as Swift

Pellegrino.

Q That individual that I have just shown you: have you ever seen him come into the bank at 3217 Westchester Avenue?

A Yes, sir.

Q Can you tell us when you recall that he first came into the bank or when you recall him first coming into the bank?

A As far as I remember, maybe about a year after I started to work over there, as far as I remember.

Q That would be in the middle of 1970, some time?

A Something like that.

Q And do you recall how often he came into the bank from the middle of 1970 on through the end of 1972?

A Oh, an average of one, one, two, three times a week.

Q Anywhere between one and three times a week?

A Yes, sir.

Q Did you ever observe whether or not he carried anything with him when he came into the bank?

A Well, all the time I seen him carrying a paper bag.

MR. PHILLIPS: Your Honor, may the reporter read the last answer? I didn't hear the beginning.

THE COURT: Surely.

(Answer read.)

Q Did you see what he did with that paper bag?

A Go straight to one of the tellers and give the paper bag to one of the tellers.

Q Did you see what the tellers or the teller that he would go to did with the paper bag?

A I see the teller taking out the content of the bag and moving with their hands. It looks like the teller is counting money. It looks like it. I didn't see what's in the paper bag, but that's what it looks like.

Q Did you ever hear this individual say anything to any of the tellers with respect to the contents of the bag?

MRS. ROSNER: Objection, your Honor.

THE COURT: Overruled.

Q Would you answer the question, Mr. Figueroa?

A The question again, please?

MR. PHILLIPS: May the reporter read it?

THE COURT: Yes.

(Question read.)

A Yes, sir.

Q What did you hear him say?

A One time I hear the customer tell the teller

"Nine hundred." Another time I hear the teller says
'Seventeen,' so I figure she --

MRS. ROSNER: Your Honor, I object to what the
teller said and move to strike.

THE COURT: Yes. Whatever you figure is not
really competent.

Ladies and gentlemen, don't consider what Mr.
Figueroa might figure.

Go ahead.

Q Was it the teller or the individual who used
the figure "seventeen hundred"?

MRS. ROSNER: Objection to the leading, your
Honor.

THE COURT: I will sustain the objection to
that.

Q With respect to the time that you heard the
individual say "Nine hundred," did you see the contents
of the bag?

A Yes, sir.

Q What was the contents of the bag?

A Bills.

Q When you say ---

A Money.

Q Was the money in a stack?

1 A Yes, sir.

2 Q Could you show to the jury approximately how thick
3 the stack was?
4

5 A About two inches, three inches, something
6 between two and three inches.

7 Q Did you see what the individual did with this
8 stack of money?

9 A He gave it to the teller.

10 Q Did you see what the teller did?

11 A The teller start to count and in return --
12 returned to the customer a smaller stack of bills.

13 Q How thick was that stack?

14 A A little less than about a quarter of an inch.

15 Q Now, on the occasion that you heard the figure
16 "seventeen hundred," who mentioned or used the word --

17 MRS. ROSNER: Objection. It assumes a fact not
18 in evidence.

19 MR. PHILLIPS: May I finish the question?

20 THE COURT: All right.

2 21 Q On the occasion that you heard the word "seventeen
22 hundred," who was the individual who mentioned it?

23 MRS. ROSNER: Objection, your Honor. No proper
24 foundation.

25 THE COURT: Sustained.

Q On the occasion that the figure "seventeen hundred" was used, could you tell us what you observed?

THE COURT: No, Mr. Phillips. Come on up.

(At the side bar.)

THE COURT: The problem is this: this witness has not testified to seventeen hundred. He said seventeen, and then he said he figured that she -- and then I cut him off.

MR. PHILLIPS: I thought he said seventeen hundred.

THE COURT: No way.

MR. CURRAN: He said, "Nine hundred."

MR. PHILLIPS: Then I would ask the witness over again whether he heard any figures used by the individual on any other occasion.

MRS. ROSNER: We have the answer: "Seventeen."

MR. PHILLIPS: Then, if that is true, my alternative ground, if your Honor won't let me ask that question, is to plead surprise and declare the witness hostile and be permitted to cross-examine him.

THE COURT: No. Ask the question again, but listen to the answer.

(In open court.)

Q Mr. Figueroa, you mentioned that on one occasion --

1 and you also testified to what you observed on that
2 occasion -- that this individual mentioned the figure
3 nine hundred. Did you ever hear any other occasion
4 where any other figure was mentioned by this individual?
5

6 A Yes.

7 Q Could you tell us what the figure was?

8 A Seventeen hundred.

9 Q Seventeen hundred?

10 A Yes.

11 Q And did he say that to the teller?

12 A To the teller.

13 Q Could you tell us what you observed on that
14 occasion?

15 A I observed he gave the paper back to the teller,
16 and then the teller start to count. I don't know what
17 happened after that.

18 MR. PHILLIPS: I have no further questions,
19 your Honor.

20 MRS. ROSNER: One or two questions, your Honor.
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CROSS EXAMINATION

BY MRS. ROSNER:

Q Good afternoon, Mr. Figueroa.

A Good afternoon.

Q Sir, I take it from what you told the jury you yourself have never been employed as a teller at the bank, is that right?

A I was never employed as a teller at the bank, no. I just say this now for the first time.

Q Now, do you happen to know whether the individual whom you identified in that photograph had an account at that bank?

A I really don't know, sir -- ma'am. Sorry.

THE COURT: This is the day of women's liberation. Go ahead.

Q I hope that that's because you are nervous, Mr. Figueroa.

Sir, are you familiar with banking procedures so that you could tell the jury whether when someone brings bills into a bank and changes them into another form, some type of report is presented for the Revenue Service? Do you know about those things?

A No, ma'am.

Q You have no knowledge about them?

A No.

Q And I take it from what you have already told the jury that you yourself don't know whether Mr. Pellegrino had any discussions with the teller, whichever teller, about where the money came from. That's correct, isn't it?

A Correct.

Q Mr. Figueroa, when you aren't being a guard at the bank, do you ever gamble, sir?

MR. PHILLIPS: Objection, your Honor.

THE COURT: Sustained.

A No.

MRS. ROSNER: I have no further questions, your Honor.

THE COURT: Does anyone else wish to inquire?

MR. ELLIS: Yes, your Honor. I have one or two questions.

CROSS EXAMINATION

BY MR. ELLIS:

Q Mr. Figueroa, you don't know whether this gentleman was making a deposit on any of these occasions, do you?

A No, sir.

Q Do you know whether he was taking money out?

A I saw him a few times or most of the time coming in with money and taking out money. I don't know exactly the transaction.

Q You don't know what he was doing there, do you, Mr. Figueroa?

MR. PHILLIPS: Objection to that, your Honor.

THE COURT: Yes, that's argumentative.

Q Before today, were you shown the picture of this gentleman, sir?

A Yes, sir.

Q When was that?

A Yesterday.

Q Where were you shown that picture?

A Pardon me?

Q Where did you see that picture?

A I saw that picture in the bank and I saw the picture over here in court.

Q Well, before today were you in court?

THE COURT: No, he means the courthouse.

Q Was it a government agent that showed you that picture, Mr. Figueroa?

A Yes, sir.

Q And did he show you a picture of anyone else

other than this gentleman, the bank customer?

A No, sir.

MR. ELLIS: I have no further questions.

THE COURT: Anybody else?

All right, Mr. Figueroa, thank you very much.

Mr. Clerk, would you show Mr. Figueroa the way out.

(Witness excused.)

THE COURT: Call your next witness.

MR. PHILLIPS: Your Honor, the government calls Mr. Connelly, Francis Connelly.

F R A N C I S J. C O N N E L L Y, called as a witness by the government, being first duly sworn, testified as follows:

MR. PHILLIPS: Your Honor, Mr. Fortuin will question this witness.

DIRECT EXAMINATION

BY MR. FORTUIN:

Q Mr. Connelly, by whom are you employed?

A New York City Police Department.

Q And what is your position with the Police Department?

A A police officer.

Q And how long have you been a police officer?

1
2 A Six and a half years.

3 Q In February through May of 1973 what was your
4 assignment?

5 A Special Investigations Unit, narcotics.

6 Q And at that time who was in charge of the unit
7 to which you were assigned?

8 A Sergeant Martin O'Boyle.

9 Q And at that time what was the Special In-
10 vestigations Unit investigating?

11 MRS. ROSNER: Objection, your Honor.

12 MR. FISHER: Objection.

13 Q Generally what were your duties?

14 THE COURT: Are you withdrawing the question?

15 All right. What were your duties?

16 A Investigations of narcotics operations.

17 Q Directing your attention to the evening of Febru-
18 ary 12, 1973, were you on duty on that occasion?

19 A I was.

20 Q And did there come a time when you were in
21 the area of the Boston Road and Baychester Road, in the
22 Bronx?

23 A Yes.

24 Q Can you tell us what happened when you got
25 there?

1 A I observed Frank Stasi and two other, unknown,
2
3 males enter the Tear Drops night club.

4 Q And did you enter the Tear Drops night club
5 at that time?

6 A I attempted to gain entry and the woman at the
7 door refused to admit me.

8 Q So after attempting to gain entry, what did
9 you do?

10 A I returned to my auto and maintained surveil-
11 lance in front of the location.

12 Q Okay, thereafter, without telling us the conver-
13 sations, did you ever have a conversation with one of
14 your fellow officers?

15 A Yes, I did.

16 Q And who was that?

17 A Police Officer O'Donnell.

18 Q Now, after the conversation that you had
19 with Officer O'Donnell, what did you do?

20 A I went and got a camera.

21 Q Where did you go?

22 A To my residence.

23 Q Your home?

24 A Yes.

25 Q And what kind of camera did you get?

1
2 A A Kodak Instamatic.

3 Q And do you know how recently prior to this
4 occasion you had used that camera?

5 A Prior Christmas, about two months before.

6 Q Okay. After you got the camera at your
7 home, where did you go then?

8 A I returned to the Tear Drops and again tried
9 to get in. This time I did get in.

10 Q And what did you do when you entered the
11 Tear Drops?

12 A I went in, went to the bar, and at the
13 rear of the bar I found Patrolman Daly and Patrolman
14 O'Donnell.

15 Q Did you take any pictures at that time?

16 A Yes, I did.

17 Q And what did you take pictures of?

18 A The band area.

19 Q Now, other than the officers that you met, did
20 you recognize anyone in the bar that evening?

21 A Yes, I did.

22 Q Whom did you recognize?

23 A Frank Stasi and Carmine Tranunti.

24 Q And did you take pictures of them?

25 A No, I did not.

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Connelly-direct

1194

Q Officer, were there other people taking pictures there that evening?

A Yes.

Q And what were they taking pictures of?

A From what I could see it appeared that they were taking pictures of the band area also.

Q Did you see anyone take pictures of Mr. Stasi or Mr. Tramunti?

A I didn't see anyone take pictures, no.

Q Was there any location in the Tear Drops that evening where you could have taken pictures of Mr. Stasi or Mr. Tramunti unobserved by them or the other customers that evening?

MR. SIEGAL: Objection, your Honor.

THE COURT: I will sustain it.

Q Officer, now directing your attention to the morning of May 2, 1973, were you on duty on that occasion?

A Yes, I was.

Q And generally what were you doing?

A Surveillance in the area of Westchester Avenue.

Q Okay. Now, directing your attention to 1:15 in the afternoon on that date, precisely where were

1 you located at that time?

2 A On Westchester Avenue, just north of Crosby
3 Avenue.

4 Q All right. And were you in a vehicle or were
5 you standing outside?

6 A I was in my own auto.

7 Q And at that time, did you see anyone that you
8 recognized?

9 A Yes, I did.

10 Q Whom did you see?

11 A I saw Carmine Tramunti, Frank Lalli, Louis Ing-
12 lese and another male engaged in conversation in front
13 of the Lo Piccolo Espresso Social Club.

14 Q Now, officer, do you see the person that you
15 described as Carmine Tramunti sitting in this courtroom?

16 A He is over here, with the blue suit and
17 gray shirt and tie.

18 MR. FORTUIN: May the record reflect that
19 the witness has identified the defendant Carmine Tramunti.

20 Q Do you see the person you have described as
21 Louis Inglese sitting in the courtroom?

22 A He is over here, with the red shirt and gray
23 jacket or sweater.

24 MR. FORTUIN: May the record reflect that
25

the witness has identified the defendant Inglese.

THE COURT: Yes.

Q How long did that conversation last, officer?

A Approximately 10 minutes, 15 minutes.

Q And after the end of that conversation, what happened or what did you see the participants do?

A Carmine Tramunti and Frank Lalli walked across the street to the print shop across the street from the social club and Louis Inglese and the other male got into an auto and drove away and left the area.

Q Now, officer, directing your attention to the day of May 29, 1973, were you on duty on that occasion?

A Yes, I was.

Q And did there come a time when you were inside an apartment at 1651 Williamsbridge Road?

A Yes, I was.

Q And who else was present inside the apartment at that time?

A Frank Stasi and Sergeant Martin O'Boyle.

Q And while you were there what did you observe?

A Frank Stasi took a paper bag from a closet and from that he removed a plastic bag containing approximately one pound of white powder, took a sample from that and put it in another bag. I took that sample of alleged

cocaine to the property clerk -- to the police lab.

Q To the chemist?

A Yes.

Q Now, directing your attention to the following day, May 30, 1973, were you also on duty on May 30th?

A I was.

Q Now, at about 8:30 p.m. that evening, where were you then?

A In the vicinity of 116th Street and Pleasant Avenue, Manhattan.

Q Can you be a little more specific and tell us precisely where you were?

A On the southeast corner, parked in an auto.

Q Okay. Did you have any other special equipment with you?

A I had a Kel receiver.

Q Can you describe to the jury what a Kel receiver is?

A It's an attache case containing a tape recorder and a monitoring device in it.

Q What does the monitoring device monitor?

A It's a transmitter that can be placed on a person and you pick up conversations.

Q And on this occasion was a transmitter placed

on a come person?

A The transmitter was placed on Frank Stasi.

Q And at this time was the Kel receiver operative at this time while you were sitting in your vehicle?

A We were operating it, yes.

Q And was any recording made of what you heard over that receiver?

A Yes.

Q Now, what did you hear over the receiver on that occasion?

A It was very poor reception. It was pretty much all garbled. It was hard to distinguish anything on it.

Q And since that time have you listened to the tape that was made of what was received over the Kel receiver?

A Yes, I have.

Q And what did you hear on that tape?

MR. FISHER: Objection, if your Honor please. The tape can speak for itself.

THE COURT: Come up and tell me about this.

(At the side bar.)

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2 THE COURT: Is this one of the tapes that's
3 been turned over?

4 MR. FORTUIN: It was turned over months ago,
5 yes.

6 MR. FISHER: Which one are we talking about?

7 MR. PHILLIPS: This is the Lentini-D'Amico
8 tape. It's inaudible.

9 MR. FORTUIN: I am simply trying to demon-
10 strate that there were no conversations that could be
11 heard on the tapes.

12 THE COURT: All right. Let's go ahead.
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(In open court.)

THE COURT: Officer Connelly, you said that you have since listened to the tape that was made on that radio tape recording device which you call a Kel receiver, is that right?

THE WITNESS: Yes.

THE COURT: All right. Go ahead.
The last question I think was what did you hear on the tape.

BY MR. FORTUIN:

Q What did you hear on the tape?

A The same thing I heard when monitoring it. It was all garbled and very difficult to distinguish anything that was said.

Q On that evening when you were on duty was there an occasion when you observed Frank Stasi?

A Yes, I did.

Q Can you tell us what happened?

A Shortly after 8:30 he drove into the area and parked his car on the east side of Pleasant Avenue between 116th Street and 117th Street in front of Barone's Bar. He got out of the car and engaged in conversation with Thomas Lentini. He was standing there for a few minutes in conversation.

Both persons walked to the building line and I lost sight of them for a few minutes. They came back away from the building line and walked north to 117th Street and Pleasant Avenue and entered the Pleasant Tavern on the northeast corner.

At this time I changed my location in an effort to monitor their conversation a little better, changed my location to 117th Street between Pleasant Avenue and the East River Drive.

Q Could you overhear any conversation at that time over the transmitter?

A It was still pretty much garbled and undistinguishable.

Q Thereafter did you see Frank Stasi exit the bar?

A I didn't see him exit the bar. I saw him enter his auto at approximately 11 o'clock.

Q After you saw Frank Stasi enter his car where did you go then?

A I went to the Centaur Bar at 46 -- on 46th Street between First and Second Avenues.

Q After you arrived at the Centaur Bar what did you do?

A I went into the bar and sat approximately at

2 the middle of the bar.

3 Q Thereafter did you see Frank Stasi?

4 A He entered the bar a few minutes after I
5 did.

6 Q What did he do when he got there?

7 A He sat at a table just off from the bar, about
8 at the middle of the bar, off from the bar, about 10,
9 15 feet from where I was sitting. He sat down with a
10 Vincent D'Amico at the table and they were in conversation
11 for a short time and then Frank Stasi and Vincent
12 D'Amico got up and went to the rear of the bar, in the
13 area of the men's room, remained there for a few minutes,
14 came back out.

15 Frank Stasi went to the bar and engaged
16 in conversation with a few people there and Vincent
17 D'Amico went to a table which he was at before he engaged
18 in conversation with Frank Stasi.

19 Q The person that you identified as Vincent
20 D'Amico, do you see him sitting in the courtroom today?

21 A Yes, I do.

22 Q Could you point him out?

23 A Over there, in the brown suit, sitting behind
24 the gentleman with the beard.

25 MR. FORTUIN: May the record reflect that

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Connelly-direct

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2 the witness has identified the defendant Vincent D'Amico.

3 Q About how long were Mr. Stasi and Mr. D'Amico
4 in conversation that evening?

5 A Approximately a half an hour.

6 Q And after Stasi left what did you do?

7 A A few minutes after he left I left.

8 MR. FORTUIN: Your Honor, may I confer one
9 minute?

10 THE COURT: Sure.

11 (Pause.)

12 MR. FORTUIN: I have no further questions.

13 THE COURT: All right. Perfect timing.

14 Ladies and gentlemen of the jury, we are
15 going to take our afternoon break right now.

16 (Recess.)

17 (In open court; jury not present.)

18 MR. ROSENBAUM: Your Honor, with reference
19 to the witness now testifying, there is absolutely
20 no 3500 material that I have received and at this
21 point it would come to me as a surprise. If there
22 are any notes that were made I think they should be
23 submitted at least at this point.

24 MR. FORTUIN: The 3500 material was made
25 available in Mr. Phillips' office last week or early

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Connelly-redirect

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this week, four or five days ago.

MR. ROSENBAUM: That comes to me as a complete surprise.

THE COURT: Do you have that material here?

MR. FORTUIN: I will try to put it together.

MR. ROSENBAUM: Your Honor, also, if there are any reports with reference to the failure of the electronic devices, which there should be if such failure took place, I would appreciate receiving them now also.

MR. FORTUIN: Those tapes have been available and are now available.

MR. ROSENBAUM: I am not talking about the tapes. I am talking about the reports with reference to the functioning of the electronic surveillance.

THE COURT: The 3500 material that we are talking about, has it been marked?

MR. PHILLIPS: It hasn't been marked, your Honor.

MR. FORTUIN: Yes, it has been marked.

MR. PHILLIPS: I beg your pardon.

MR. ROSENBAUM: In speaking with co-counsel, not only do I not have the 3500 material, but it appears most of the defense attorneys are in the same position I am.

MR. FORTUIN: For the record, the relevant 3500 material with respect to this witness would be Exhibit 3541, a report of May 30, 1973, 3539, a report of Wednesday, May 2, 1973, 3540, a report of May 29, 1973.

The other one would be the same 3500 material

1 hp2

Connelly

2 that Mr. Phillips distributed with respect to Officers
3 Daly and O'Donnell, which would be Exhibit 3537.

4 MR. LEIGHTON: Judge Duffy, while the 3500
5 material is being looked at I would just like to say that
6 Mr. Pollack has absented himself this afternoon. He has
7 asked me to cover for him and Mr. Salley has consented.

8 THE COURT: All right. He mentioned that this
9 morning to me.

10 (At the bench.)

11 THE COURT: An application is made by the United
12 States Attorney to unseal certain exhibits which formerly
13 have been sealed in this case.

14 MR. PHILLIPS: They have been designated
15 Court's Exhibits 42 through 46 and they are reel recordings
16 M-167, A-322, M-159, M-244 and M-209.

17 THE COURT: The application is granted.

18 MR. PHILLIPS: Thank you, your Honor.

19 (In open court.)

20 THE COURT: To bring everybody up to date, what
21 was going on up here was a request being made by the
22 government to unseal certain exhibits which I sealed
23 before.

24 All right. Bring back the jury.

25 MR. FISHER: Unseal certain exhibits, your

1 hp3 Connelly -cross

2 Honor?

3 THE COURT: Yes. After I seal them they can't
4 get at them.

5 MR. FISHER: Is this with regard to 3500
6 material?

7 THE COURT: That's correct.

8 (Jury present.)

9 THE COURT: Ladies and gentlemen, I know that
10 often you sit in the juryroom and wonder what is going on.
11 Housekeeping things are being done. Truthfully, it
12 constantly astounds me the number of housekeeping things
13 the Judge has to do. Let me give you a for instance.
14 I have to figure out who is going to pay for newspapers
15 which are delivered to you during the day. It's things
16 like that that add the extra little burden.

17 All right. We broke just at the end of the
18 direct testimony.

19 CROSS EXAMINATION

20 BY MR. FISHER:

21 Q Mr. Connelly, you testified on direct examination
22 to the use of a Kel transmitter?

23 A Yes.

24 Q I believe you indicated that you placed one on
25 Frank Stasi on May 30, 1973?

1 hp4

Connelly-cross

2 A Yes.

3 Q And you were with Mr. Stasi on May 29, 1973?

4 A That's correct.

5 Q Did you place a Kel transmitter on him that day?

6 A I don't recall if I did or not. I don't think
7 so.8 Q Was one placed on him in your presence on May
9 29, 1973?

10 A I don't recall if it was or not.

11 Q On the 30th, when you do recall placing a
12 transmitter on Mr. Stasi, where precisely was it placed?13 A I didn't say that I placed it on him. It was
14 placed on him.

15 Q It was placed on him in your presence?

16 A No.

17 Q It wasn't?

18 A No.

19 Q So you don't know?

20 A Excuse me.

21 Q You don't know then, sir, where it was placed
22 on the body of Mr. Stasi?

23 A No, I do not.

24 Q You are familiar, however, with the equipment
25 of a Kel transmitter?

1 hp5

Connelly-cross

2 A Yes.

3 Q And you know that the transmitter apparatus that
4 is placed on the operative, in this case, Mr. Stasi,
5 contains an on-off switch, do you not?

6 A That's correct.

7 Q So that the person wearing the Kel transmitter
8 can, if he wishes, turn it on or off?

9 A That is correct.

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Q You also know that there is a wire running up from the box portion of the Kel transmitter that generally runs up the body; isn't that right?

A That's correct.

Q And at the tip of that is a small thing that functions as a microphone; is that correct?

A Yes.

Q And that by rubbing against the microphone it is possible for the operator to create static in the transmission?

A That's correct.

Q And that the microphone is generally placed on the body under the shirt or some other form of clothing?

A That's correct.

Q And that the rubbing of the clothing against the tip of the microphone can create static in the transmission?

A It does.

Q And that the result of that is that it can effectively blot out what is being received?

A It can, yes.

Q And you say that on the 30th the transmission was distorted?

A That's correct.

pp2

Connelly-cross

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2 Q You were, however, were you not, able to hear
3 certain words?

4 A Yes.

5 Q And you were, however, able to make out certain
6 voices?

7 A No. I wouldn't necessarily say that, no.

8 Q Now, your end of the Kel is the receiving end;
9 is that right?

10 A That's correct.

11 Q And it is a fact, is it not, that it is possible
12 to use more than one receiver?

13 A Yes. That's --

14 Q Because the Kel transmitter, the part that would
15 be on Mr. Stasi, sends out a signal on a certain frequency?

16 A That's correct; yes.

17 Q And any receiver tuned to that frequency can
18 pick it up?

19 A That's correct, yes.

20 Q Was, to your knowledge, another receiver used
21 on the 30th other than your own?

22 A Not to my knowledge, no.

23 Q Sometimes, however, in the course of surveillance
24 work, it is sometimes done, is it not, the use of more than
25 one receiver?

pp3

Connelly-cross

1 A If they are available, yes.

2 Q And that is because it helps -- well, it helps
3 the receivers to better guarantee a reception?
4

5 MR. FISHER: May I withdraw that terrible
6 question, your Honor?

7 THE COURT: Sure.

8 Q It is believed, is it not, by those who use
9 the Kel receivers that the use of more than one receiver
10 is helpful in better assuring you the reception from the
11 transmitter; isn't that right?

12 A Well, that's one of the reasons, yes.

13 Q Was Mr. Stasi ever wired in your presence?
14 I mean, was a transmitter ever placed on him by you or
15 in your presence, on any other occasion other than May 30?

16 A Not that I can recall at this time.

17 Q Between May 22, 1973, sir, and the present --

18 MR. FISHER: Withdrawn.

19 Q Between May 22, 1973, and let us say June 7th
20 or 8th of 1973, about a two-week or a little more than a
21 two-week period, how many times were you with Mr. Stasi?

22 A I don't recall now. I don't know.

23 Q Can you give us any reasonable approximation,
24 sir?

25 A No; I can't. I don't know how many times I

pp4

Connelly-cross

was with him.

Q Could it have been more than five times?

A It could have been. I don't know.

Q When a Kel transmitter and receiver are used, is it normal procedure for an agent to sign the equipment out from somewhere?

A Yes.

Q And so a record would be made in each instance that a Kel transmitter and receiver is used; isn't that right?

A I don't follow your question.

Q Well, who is responsible for getting the Kel receiver? That is the thing you had on May 30.

A Anyone who is available to get it.

Q And where does the person who is available to get it go to get it?

A Several places, wherever there is a unit available.

Q And when he goes to wherever the place is to get a unit available, he signs for it?

A That's correct.

Q It is regarded as an expensive piece of equipment?

A Yes, it is.

1 pp5

Connelly-cross .

2 Q And where are the records, if you know, for the
3 signing out of the Kel transmitters?

4 A The records are kept, to my knowledge, at the
5 locations that you sign them out from.

6 Q Okay. We are back to that one. Do you know
7 what those locations are, sir?

8 A Well, you can get them from the District
9 Attorney's office; you can get them from the Special
10 Narcotics Prosecutions' office; the Internal Affairs
11 Division of the New York City Police Department.

12 Q In any event, in each such instance that such
13 a machine or device is used, somewhere there is supposed
14 to be a record of the receipt of the machine?

15 A Correct.

16 MR. FISHER: I have no further questions.
17 Thank you.

18 CROSS EXAMINATION

19 BY MR. ROSENBAUM:

20 Q Officer, about what time of day on May 30th did
21 you realize that the receiver of the unit was not properly
22 functioning?

23 MR. FORTUIN: Objection.

24 THE COURT: The receiver?

25 MR. ROSENBAUM: That the instrument, that the

1 pp6 Connelly-cross

2 receiver, whatever you call it, was not functioning.

3 MR. FORTUIN: There is no testimony that it
4 was not functioning.

5 THE COURT: That is not the testimony at all.
6 I think what he said was that he was receiving garbled
7 reception.

8 Q About what time of day did you determine that
9 the reception you were receiving was garbled?

10 A At the time that Frank Stasi entered the area,
11 when he first got out of the car and approached Thomas
12 Lentini.

13 Q Did you stay at Pleasant and 116th Street?

14 A I was at Pleasant Avenue and 116th Street.

15 Q And did you at that time determine that the
16 reception was garbled?

17 A Yes; I did.

18 Q And do you know what time that was, what hour
19 of day?

20 A Approximately 8.30 at night. The exact time is
21 in the report.

22 Q Do you want to check the report and let me know?
23 Do you have the report with you, Officer?

24 A No; I don't.

25 Q You knew you were going to testify today, didn't

1 pp7

Connelly-cross

2 you?

3 THE COURT: Have you got the report?

4 MR. FORTUIN: Handing the witness Government's
5 Exhibit 3541, which has previously been supplied to
6 defense counsel.

7 A Approximately 8.40 p.m.

8 Q And about what time did Mr. Stasi enter the
9 Centaur Bar that night?

10 A Approximately 11 o'clock at night.

11 Q About three and a half hours later; is that
12 correct?

13 A Approximately, yes.

14 Q And during that period of time you knew that
15 the reception you were getting was garbled; is that correct?

16 A That is correct.

17 Q And how long before you started your surveillance
18 did you know of your assignment, that you were going to
19 surveil Mr. Stasi on May 30th?

20 A Shortly before.

21 Q And did you check out your equipment when it was
22 placed on Mr. Stasi?

23 A I don't recall if I personally checked it out
24 or someone else did.

25 Q Well, would it be customary in the course of your

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Connelly-cross

investigation to test out this electronic surveillance before you go out into the field?

A Yes; it is customary.

Q Well, did you check it out that night?

A I don't recall if I did or someone else did.

Q But you did at about 8.40 that evening find out that the electronic device was garbled, that your reception was garbled?

A That's right.

Q And you testified earlier that you could have gotten new receivers at the District Attorney's office, the precinct, any one of a number of federal agencies; isn't that correct?

A Well, we don't get our equipment from those agencies. At that time we were not.

Q Well, were other receivers available to you?

A Not on that short notice.

Q Three and a half hours is short notice?

A Well, we were maintaining surveillance at that time. We were not available to get another receiver.

Q Well, your surveillance was not working out too well, because your receiver was not working?

MR. FORTUIN: Objection.

THE COURT: That is argumentative, counsel.

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THE COURT: Now we are away from just the receivers. You are talking about any kind of surveillance?

MR. ROSENBAUM: I will withdraw that. Just receivers at this time.

A Not that I know of.

Q Was there any other officer with you surveilling Mr. Stasi that night?

A If there was, I don't recall who it was.

Q Would your report indicate it?

A No.

Q Do you remember discussing this surveillance with your supervisor before you went out on surveillance that night?

A Yes.

Q And do you remember who was present at the discussion besides you and your supervisor?

A My partner who was with me that night, in the same auto, was present.

Q What was your partner's name, officer?

A Gerald Sheehan.

Q Was Officer Sheehan with you at the time your receiver was receiving the transmission in a garbled manner?

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Connelly-cross

Q Do you know if any other receivers were given to brother officers the same night that you had yours, that they were able to receive transmission from Mr. Stasi?

A I don't know if there were any other receivers that night.

Q Do you know if there were any other officers that were surveilling him that night by means of electronic surveillance or otherwise?

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Connelly-cross

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A Yes, he was.

Q And did you ask your brother officer or did your brother officer ask you to get a new receiver?

A No. That would be pretty much impossible on that short a notice.

Q Would you say it would take more than three and a half hours to get another receiver?

A At that time of night to get another receiver of the same frequency would be almost impossible.

Q 8:30 at night?

A That's correct.

Q And it is your testimony that you did not check your receiver at any time before Mr. Stasi actually went out into the field that night, is that correct?

A I don't recall if I checked it or not.

Q Do you know if any tape recordings were made?

A Of that night?

Q Yes.

A Yes, there was one.

Q And with the tape recordings to be made by means of the receiver that was in your auto, in your possession?

A That's correct.

Q And was it important to you, officer to get

good tape recordings, tape recordings that could be understood?

A That was my function, yes.

Q That was your function. Was that your primary function?

A No. Not the primary function, no.

Q But it was an important element?

A Yes, it was.

Q Just one more question with reference to that subject.

Did you make any effort that evening to get a new receiver to correct the garbled manner in which you were receiving the voice?

MR. FORTUIN: Objection. It's been asked and answered.

THE COURT: No, it's a little different this time. There is another part.

Go ahead and answer it.

Q When you went down --

THE COURT: No, no, you didn't get the answer.

MR. ROSENBAUM: I am sorry. I thought --

THE COURT: I told him to answer it.

A I made no attempts to get another receiver.

THE COURT: The thing I am interested in is

2 the other part. Did you attempt any adjustments on
3 the receiver to take out the garbled part of the re-
4 ception -- if there are any adjustments?

5 THE COURT: There's a squelch button on it.
6 That's about the only adjustment you can make.

7 THE COURT: Did you try using the squelch?

8 THE WITNESS: Yes. It didn't help.

9 Q Do you know where the tapes are?

10 A Where the tape is?

11 Q That were played that night.

12 A No. I don't have personal knowledge of where
13 they are right now.

14 Q What did you do with the tapes --

15 MR. ROSENBAUM: Withdrawn.

16 Q Did you have the tapes in your custody after
17 the surveillance was over, for that night?

18 MR. FORTUIN: Your Honor, I object to this.
19 The tapes were supplied to the defense weeks ago.

20 MR. FISHER: I object to that.

21 THE COURT: All right. Go ahead.

22 Did you maintain the tapes after that particu-
23 lar night?

24 THE WITNESS: No, it's turned in to the
25 District Attorney's Office.

Q Did you turn them in to the District Attorney's Office?

A I don't know if I personally turned them in or another officer did.

Q Were the tapes played back to you or did you play back the tapes to yourself after that night was over?

A Yes.

Q Now, when you went down to the Centaur Bar, officer, you said that Mr. Stasi came in about 15 minutes after you got there, is that correct?

A A few minutes after. I don't know if it was 15.

Q A few minutes after. And you expected him to come down, is that correct?

A That's correct.

Q Do you know where Mr. Stasi was for the 15 minutes or so before he came down to the bar?

A I didn't say it was 15 minutes.

Q Or a few minutes, I think you said.

A That was the traveling time from 16th Street and Pleasant Avenue to 46th Street and First Avenue.

Q Do you know if Mr. Stasi was due at the bar at any particular time of night?

1 A Yes, he was due there.

2 Q Was an appointment made with one of your
3 fellow officers to be there at a particular time? Yes
4 or no, officer.

5 A There was an appointment made, yes.

6 Q And from 116th Street and Pleasant Avenue
7 down to the Centaur -- where is the Centaur Bar located?

8 A 46th Street between First and Second Avenues.

9 Q And do you pass any area or any law enforce-
10 ment agency where you could have picked up another re-
11 ceiver, from Pleasant Avenue and 116th Street down to the
12 Centaur Bar? Could you find anywhere to get another
13 receiver?
14

15 MR. FORTUIN: Objection.

16 THE COURT: I will permit it. Go ahead.

17 A No.

18 Q Now, you said that Mr. Stasi came into the
19 bar, he went over and spoke with Mr. D'Amico, is that
20 correct?

21 A That's correct.

22 Q Where was Mr. D'Amico in the bar at that time?

23 A They sat at a table approximately 10 or 15 feet

24 Q When you came into the bar where was Mr.
25 D'Amico sitting -- seated?

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2 A Towards the rear of the bar at a table.

3 Q By himself?

4 A No. He was with another male and two
5 females.

6 Q Do you know who the other male and two fe-
7 males were?

8 A No, I do not.

9 Q Did you later become aware of their identity?

10 A No, I didn't.

11 Q Could you describe the two females and the
12 male?

13 A I don't recall what they looked like, no.

14 Q Did you have a camera with you that night?

15 A No, I didn't.

16 Q You have no idea what these two girls
17 and this male looked like, is that correct?

18 A That's correct.

19 Q Now, when Mr. Stasi came in, did he go right
20 to the table or did he stop at the bar?

21 A He came into the bar and Vincent D'Amico got
22 up from the table that he was at and met him at about
23 the middle of the bar and they sat down at the table.

24 Q Were any drinks served to Mr. Stasi that night
25 at the table?

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A I don't recall.

Q Would your report indicate it?

A Probably not, no.

Q And how long did they sit at the table before they apparently got up and walked to the rear of the bar?

A Fifteen minutes, 20 minutes.

Q And were any drinks served to anybody at the table at any time during that 15 or 20 minutes?

A I don't recall if they had any drinks or not.

Q Could you see whether or not Mr. Stasi snorted any cocaine that night while sitting at the bar during those 15 or 20 minutes?

A I didn't see him do that, no.

Q Were you observing Mr. Stasi at all times?

A Yes, I was.

Q And what did you see when you observed him?

A I saw him in conversation with Vincent D'Amico.

Q Did you see him being served any drinks or snorting cocaine?

A I don't recall him being served any drinks and I didn't see him snort any cocaine.

Q Now, were the other two females and the male also engaged in that conversation?

A No, they remained at the table they were at.

Q That conversation took place by the bar?

A At a table approximately 10 to 15 feet from the bar.

Q Wasn't that the same table that Mr. D'Amico was sitting at when you first came into the bar?

A No.

Q It was a different table he moved to?

A It was a different table, yes.

Q And how far was that table from you?

A Which table, now?

Q The table where Mr. D'Amico and Mr. Stasi were sitting.

A Approximately 10 or 15 feet from where I was sitting. A little less, approximately where that table there is.

Q And were you able to hear any of their conversation?

A No.

Q Was your receiver still turned on at that time?

A I don't know. It was no longer in my con-

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2 trol.

3 Q Whose control was it in?

4 A My partner, Gerald Sheehan.

5 Q I thought before you testified that you were
6 the only person who had any receiver that night?

7 A Well, when I said "I," I meant myself and
8 my partner. We had the same receiver. There was one
9 receiver.

10 Q So now two of you were sharing the one receiver?

11 A Yes, at 116th Street and Pleasant Avenue, yes.

12 Q Officer, you said a little while ago that you
13 were the only person using that receiver, is that correct?

14 A Yes. That's correct.

15 Q And when you entered the Centaur Bar you said
16 you left the receiver with your partner?

17 A That's correct, the same receiver.

18 Q Was he trying to operate that receiver, do
19 you know?

20 A I don't know.
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Q And then you said that Mr. D'Amico and Mr. Stasi got up and walked to the rear of the bar?

A That's correct.

Q Near a telephone, near the men's room, where?

A In the area of the men's room. I don't know if there is a telephone there or not.

Q They were alone at this table and they went to the rear of the bar and they continued to be alone at the rear of the bar, is that correct?

A I lost sight of them. I don't know if they were all alone.

Q I beg your pardon?

A I lost sight of them.

Q When, when they went to the rear of the bar?

A Yes.

Q So you don't know if they were in the bar then?

A I don't know if there is an exit there, if that's what you mean.

Q That is not my question. You don't know if they were in the bar at that point, do you? You don't know where they went?

A No, I don't.

Q So when you testified before that they were

1 jha Connelly-cross 1230

2 standing in the rear near the men's room you didn't
3 really see them in the rear near the men's room, is
4 that correct?

5 A I didn't say they were standing there. I
6 said they went to that area.

7 Q Did there come a time when they came back to
8 the table?

9 A They didn't return to the table. They
10 returned to the bar area.

11 Q Where you were sitting?

12 A In that general area. Vincent D'Amico sat
13 back at the table that he was originally at with two fe-
14 males and a male and Frank Stasi went to the bar.

15 Q Near where you were?

16 A Towards the front of the bar more.

17 Q How many feet was that away from you?

18 A Twenty feet or so.

19 Q Did you see Mr. Stasi snort coke at the bar?

20 A No, I did not.

21 Q Did you see Mr. Stasi drink at the bar?

22 A No, I did not.

23 Q How long did Mr. Stasi stay there?

24 A Another few minutes, and then left.

25 Q With you?

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A No.

Q How long did you remain after Mr. Satsi left?

A A few minutes after he left I left.

Q Did you meet him after that?

THE COURT: Do you mean that night?

MR. ROSENBAUM: Yes.

Q As he left the bar, within the next 10 or 15 minutes, did you meet with Mr. Stasi?

A Not that I recall, no.

Q Did your partner follow Mr. Stasi after that?

A I believe the supervisor followed him from there.

Q When did the supervisor join in on the surveillance, do you know?

A No, I don't.

Q Do you know if he ever joined in on the surveillance?

A He was a part of it for some part of the time or perhaps all of the time. I don't know.

Q Unless I am mistaken, officer, I believe you testified that just you and your partner surveilled Mr. Stasi that evening. Now you say that you, your partner and your supervisor surveilled him.

A No, that is not what I said.

Q After you left the bar you said you believe

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your supervisor surveilled him, is that correct?

What is your supervisor's name?

A Martin O'Boyle, Sergeant Martin O'Boyle.

Q Was Sergeant O'Boyle with you during the earlier part of the evening?

A Earlier that day, yes.

Q No, no. I am talking from 8:30 or 8:40 on.

Was Mr. O'Boyle with you?

A No. He may have been in the same area.

I don't know.

Q Was he part of the assignment of surveillance of Mr. Stasi?

A. I don't know what he was doing.

Q Do you know what he was doing about midnight that night, May 30th?

A No, I do not.

Q So you don't know whether or not Mr. O'Boyle followed Mr. Stasi after Mr. Stasi left Centaur?

A I don't know that he did, although I believe
he did.

Q Where do you get your belief from, officer?

A. By the fact that I believe it was Sergeant O'Boyle that took the transmitter from Frank Stasi after the meeting in the Centaur.

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Q But you weren't present when that happened?

A No, I was not.

Q When did Sergeant O'Boyle come on the scene,
to your knowledge?

A I don't know when he came on the scene.

Q Is it possible that Sergeant O'Boyle took the
transmitter two or three hours after Mr. Stasi left Cen-
taur?

A I don't know when he took it.

Q You don't even know if he took it?

A I don't know for certain that he did take it,
but I believe he took it.

Q When you said before that he took it you
weren't certain, is that correct?

A I said I believe he took it.

MR. ROSENBAUM: I have no further ques-
tions, your Honor.

THE COURT: All right. Anybody else?
Do you have any redirect?

MR. FORTUIN: Yes, one question, your
Honor.

REDIRECT EXAMINATION

BY MR. FORTUIN:

Q On the same occasion, May 30th, you testified

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Connelly-redirect

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that you saw Frank Stasi get out of his car on Pleasant Avenue between 116th Street and 117th Street?

A That's right.

MR. ROSENBAUM: Objection. That's leading, your Honor.

THE COURT: All right.

Q Did he meet someone at that time?

THE COURT: I will permit it.

A Yes, he did.

Q Who was that?

A Thomas Lentini.

Q He is also known as Moe Lentini?

MR. ROSENBAUM: Is this proper redirect?

THE COURT: I think it was covered in the direct. I don't know why we need it again.

Q Is he also known as Moe Lentini?

MR. ROSENBAUM: Objection, your Honor.

THE COURT: No.

Is he known as Moe Lentini?

THE WITNESS: Yes.

MR. FORTUIN: That's all.

THE COURT: All right. Officer Connelly, on this occasion when you used the Kel transmitter and receiver with Mr. Stasi do you know who signed out for

1 jha

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2 it?

3 THE WITNESS: No, I do not.

4 THE COURT: All right.

5 MR. FISHER: Your Honor, as a result of
6 that question.

7 THE COURT: Yes, go ahead.

8 RECROSS EXAMINATION

9 BY MR. FISHER:

10 Q Officer, when the machine is signed out
11 is there indicated on the receipt the name of the
12 operative who will be using it?

13 A No.

14 THE COURT: All right, fine. Step down.

15 (Witness excused.)

16 THE COURT: Is your next witness going
17 to be long?

18 MR. CURRAN: Yes, your Honor.

19 THE COURT: It is almost 4:15. Do you
20 want to start now or do you want to start tomorrow morning?

21 MR. CURRAN: We are prepared to start now,
22 your Honor.

23 THE COURT: All right. Who is it?

24 MR. CURRAN: John Barnaba.
25

1 jha 1236
2 J O H N B A R N A B A, called as a witness
3 by the government, being first duly sworn, testi-
4 fied as follows:
5 MR. CURRAN: Your Honor, may I inquire?
6 THE COURT: Yes.
7 DIRECT EXAMINATION
8 BY MR. CURRAN:
9 Q Mr. Barnaba, I am going to ask you to speak
10 into the microphone so we all can hear you.
11 What is your permanent residence address?
12 A 2065 Hermany Avenue, the Bronx.
13 Q For about how long have you lived in the
14 Bronx, Mr. Barnaba?
15 A Twenty years.
16 Q Before that what county did you live in?
17 A Well, I lived six months in California, six
18 months upstate.
19 Q Is that during the 20 years?
20 A Yes.
21 Q Before you lived in the Bronx did you live
22 in some other borough of New York City?
23 A Harlem.
24 MR. KING: Will your Honor direct the
25 witness to please raise his voice and keep his hand away

1 jha Barnaba-direct 1237

2 from his mouth?

3 THE COURT: All right. Just make sure
4 you get your answer into the microphone so everybody can
5 hear.

6 Q Mr. Barnaba, have you been previously con-
7 victed of crimes?

8 A Yes, I have.

9 Q Were you first convicted in about 1952, when you
10 were in the Army Reserve?

11 A Yes.

12 Q Of what were you convicted then?

13 A Desertion.

14 Q What sentence did you receive?

15 A A year and a bad conduct discharge.

16 Q By the way, had you previously received an
17 honorable discharge from active duty?

18 A Before that, yes, sir.

19 Q You received this when you were in the Re-
20 serves?

21 A Yes.

22 Q In 1953 were you convicted of violating the
23 federal narcotics laws here in this courthouse?

24 A Yes, I was.

25 Q Did you go to jail on that charge?

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Barnaba-direct

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A Yes, I did.

Q How long did you go to jail?

A Two years.

Q In 1957 were you convicted of violating the
New York State narcotics laws?

A Yes, sir.

Q Did you go to jail on that charge?

A Yes, sir.

Q What was your sentence to jail on that charge?

A Two and a half to five years.

Q In 1961, after you were released from jail
on that charge, were you arrested for parole violation
and returned to jail?

A Yes, I was.

Q For how long were you returned to jail, sir?

A Ten months.

Q What was that parole violation charge, Mr.
Barnaba?

A Nonemployment.

Q Pardon me?

A Nonemployment. I didn't have a job.

Q In the year 1972 were you indicted for
conspiracy to violate the state narcotics laws?

A Yes, sir.

1 jha Barnaba-direct 1239
2 Q Do you intend to plead guilty to that
3 charge?
4 A Yes, I do.
5 MR. LOPEZ: Objection.
6 Q Mr. Barnaba --
7 THE COURT: Let me rule on the objection.
8 It is overruled.
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Barnaba-direct

Q Mr. Barnaba, do you know a man named Richard Forbrick?

A Yes, I do.

Q When did you first meet Mr. Forbrick, approximately?

A Some time in 1962.

Q Where did you meet him then?

A At his place of employment.

Q Which was where?

A Boston Road in the Bronx.

Q What kind of place of employment was it?

A A veterinary hospital.

Q An animal hospital or veterinary hospital?

A Yes.

Q Do you know the address of that hospital?

A I think 4151 Boston Road.

Q In the Bronx?

A Yes.

Q Did Mr. Forbrick live there?

A He lived there and worked there.

Q Where did he live in the hospital?

A Upstairs.

Q What were his duties there, so far as you know?

A All around. Kennel man, took care of the dogs

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hp2 Barnaba-direct 1241

besides.

Q Did he assist the veterinarian?

A Yes.

Q Was Mr. Forbrick a veterinarian himself?

A No.

Q Mr. Barnaba, in the year 1968 were you in business?

A Yes, I was.

Q Legitimate business?

A Yes.

MR. FISHER: Objection, if your Honor please.

THE COURT: No, I will permit it.

Q What was that business, Mr. Barnaba?

A It's an animal business, dogs. It's called K-9 Security.

Q What did you do with dogs?

A Trained them for guard duty and also sold puppies.

Q In the year 1968 and, more particularly, in the year 1969 did you see Richard Forbrick?

A Yes, I did.

Q Did you see him often?

A Yes.

Q What were the occasions of these meetings?

A Well, due to the animals mostly.

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Barnaba-direct

Q You mean your dogs?

A Taking care of the dogs. He used to take care of them for me, injections and things like that.

Q In 1968 and in 1969, when he was taking care of your dogs, did you ever have a conversation with Mr. Forbrick about your criminal record?

A Yes, I did.

Q What if anything did you tell him about it?

MR. LOPEZ: Objection.

THE COURT: I will permit it.

Q You may answer, Mr. Barnaba.

A Well, I told him that I been in jail and what for.

Q Did you tell him specifically narcotics?

A Yes.

Q Now, Mr. Barnaba, directing your attention to in or about the month of December, 1969, did you see Mr. Forbrick at the animal hospital in about that month?

A Yes, I did.

Q Did you have a conversation with him at that time?

A Yes.

Q Will you please tell us what you said and what he said in substance?

hp4

Barnaba-direct

1 A Well, he asked me if I could get narcotics for
2 him and I says I wasn't sure, I'd find out, I'd let him
3 know.
4

5 Q Directing your attention now to the period of
6 time over the next several months, did you have any
7 further conversations with him on that subject?
8

9 A I did.
10

11 Q Would you tell us what they were, what was
12 said?
13

14 A Well, he kept asking me if I could get it,
15 he might be able to do something, he was negotiating.
16 This went on for five, six months, something like that.
17

18 Q And what did you say when he asked you on these
19 occasions?
20

21 A What did he say?
22

23 Q What did you say when he asked you this question?
24

25 A I says, "Well, let me know when you're ready."
26

27 Q Up to this point was there any conversation
28 about a specific amount or prices?
29

30 A No, sir.
31

32 Q Mr. Barnaba, do you know a man named Louis
33 Inglese?
34

35 A Yes, I do.
36

37 Q Will you please look around the courtroom and
38

1 hp5

Barnaba-direct

2 tell us if you see that man, Louis Ingelese, in the court-
3 room?

4 A Yes, over there.

5 Q Will you please identify him by pointing to him.

6 A Over there.

7 Q What is he wearing, Mr. Barnaba?

8 A A red shirt, gray sweater.

9 MR. CURRAN: Your Honor, may the record show
10 the witness has identified the defendant Ingelese.

11 THE COURT: Yes.

12 Q For about how long have you known Mr. Ingelese?

13 A 15 years, maybe longer.

14 Q Do you know whether he has any nicknames?

15 A Yes.

16 Q What are those nicknames?

17 A Gigi.

18 Q Any other?

19 A The Whale.

20 Q Mr. Barnaba, directing your attention to in and
21 about the month of July of the year 1970, did you see the
22 defendant Ingelese?

23 A Yes, I did.

24 Q Where did you see him on this occasion?

25 A Up on Westchester Avenue, the Bronx.

1 hp6

Barnaba-direct

2 Q What were the circumstances?

3 A Well, I stopped my car. He happened to be
4 there. We started talking.

5 Q You had your car stopped, you were on West-
6 chester Avenue?

7 A Yes.

8 Q Where was Mr. Inglese, in your car?

9 A No.

10 Q Where was he?

11 A In his car.

12 Q Did you both stop in the middle of Westchester
13 Avenue and talk?

14 A No, on the side.

15 Q Tell us what happened, Mr. Barnaba.

16 A Well, we pulled over to the side and started to
17 talk.

18 Q What was said?

19 A I asked him if I needed any goods if he could
20 get it for me.

21 Q You asked him?

22 A If I needed goods if he could supply me.

23 Q What did you mean by the word "goods"?

24 A Narcotics.

25 Q And what if anything did Mr. Inglese say to that

question?

A He says yes, he would give it to me.

Q Was anything else said at this meeting?

A Yes. He says I could find him at the club on Wilkinson Avenue, Beach Rose Club, and if I didn't see him, that I would see Finnegan or Joe Crow.

Q Did he mention anybody else besides Finnegan and Joe Crow?

A Swifty.

Q At that time did you know someone named Joe Crow?

A No.

Q At that time did you know someone named Finnegan?

A Yes.

Q Mr. Barnaba, would you please look around the courtroom and tell us if you see the man whom you knew as Finnegan.

A Yes, sir.

Q Would you please point him out and identify him by his appearance in some way.

A He is sitting in the back there.

MR. FISHER: Stipulated, your Honor.

MR. CURRAN: Your Honor, I believe Mr. Fisher said the identification was stipulated.

THE COURT: Yes, I believe so. The record will

1 hp8

Barnaba-direct

1247

2 so reflect.

3 Q Did you know Swifty's last name?

4 A Yes.

5 Q What is it?

6 A Pellegrino.

7 Q Up to this time had you ever been to the club
8 at Westchester and Wilkinson Avenue?

9 A No, sir.

10 Q Now, Mr. Barnaba, directing your attention to
11 some several weeks later, in about the month of August,
12 1970, did you have any conversation with Richard Forbrick?

13 A Yes, I did.

14 Q Where did that conversation take place?

15 A At the veterinary hospital.

16 Q What was said?

17 A He called me by phone, told me to go over, he
18 wanted to see me. I went over.

19 Q Speak up, please, Mr. Barnaba, into the mike.

20 A I went over to see him and he says that he needed
21 some goods, if I could get it.

22 Q Did he say how much?

23 A Yes. A quarter of H and a quarter of coke.

24 Q A quarter of H and a quarter of coke?

25 A Yes.

1 hp9 Barnaba-direct

2 Q What did you understand the quarter of H to
3 mean?

4 A A quarter of heroin, a quarter of cocaine.

5 Q And what is a quarter?

6 A A quarter of a kilo.

7 Q A quarter of a kilogram?

8 A Yes.

9 Q Is that about half a pound, roughly?

10 A About.

2 11 Q Did you ask him for whom the heroin or the coke
12 were intended?

13 A Yes, I did.

14 MR. RICHMAN: Objection.

15 Q Did he answer?

16 THE COURT: Let me overrule the objection before
17 you go on to another one.

18 MR. CURRAN: Sorry, your Honor.

19 THE COURT: Go ahead.

20 Q Did he respond to that question?

21 A Yes, he did.

22 Q What did he say?

23 A He said --

24 MR. RICHMAN: Objection again, your Honor.

25 THE COURT: I will permit it. Go ahead, answer

1 hpl0 Barnaba-direct

2 it.

3 A He says the H was for a fellow named The Arrow
4 and the coke was for a guy named Ben Tolopka.

5 Q At that time did you know Ben Tolopka?

6 A Yes, I did.

7 Q Mr. Barnaba, would you look around the courtroom,
8 please, and tell us if you see Ben Tolopka in the court-
9 room.

10 MR. RICHMAN: This is Ben Tolopka, Mr. Curran.

11 MR. CURRAN: I know who he is. I was asking
12 Mr. Barnaba to do it, your Honor.

13 THE COURT: I assume that is a stipulation of
14 identification.

15 MR. RICHMAN: Yes, sir, that is a stipulation.

16 THE COURT: All right.

17 Q For about how long at that time, in the summer
18 of 1970, had you known Ben Tolopka, approximately?

19 A About two years.

20 Q Was anything else said at this meeting with
21 Mr. Forbrick?

22 A Well, he said he wouldn't have the money until
23 the following day or the day after.

24 Q What did you do next, if anything?

25 A I went to the club to see Gigi.

1 hp11 Barnaba-direct

2 Q When you say the club, what club are you talking
3 about?

4 A Beach Rose on Wilkinson Avenue.

5 Q Westchester and Wilkinson Avenue?

6 A Yes, sir.

7 Q About what time of day was this, Mr. Barnaba?

8 A Early evening.

9 Q Did you see Gigi Inglese there?

10 A Yes, I did.

11 Q Did you see anyone else there?

12 A There was Finnegan, Joe Crow, swift.

13 Q Were there other people in the club?

14 A Yes, there were.

15 Q Where in the club did you see Gigi?

16 A I was standing at the bar.

17 Q You were standing at the bar?

18 A Yes.

19 Q Did you have a conversation with the defendant
20 Inglese, Gigi, at that time?

21 A Yes, I did.

22 Q Will you please tell us what was said?

23 A Well, I asked him if he had anything, that I
24 was ready, I needed something, and he answered me if it
25 was big. I says a quarter of H and a quarter of coke.

1 hp12 Barnaba-direct

2 Q Was there any discussion about delivery?

3 A Would you repeat that?

4 Q Yes. Was there any discussion about delivery?

5 A Yes. He says to go down the block with my
6 car and park.

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Q Was there any discussion about price?

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A I think there was, yes.

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Q Do you recall what was said about price?

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A 8500.

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Q Well, was there any specific mention of price
for coke and price for heroin?

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A 3000 for coke and 5500 for the H.

9

Q And what if anything did you say about that?

10

A I said all right.

11

Q Did you then go back to the veterinary hospital?

12

A Yes; I did.

13

Q About what time was that?

14

A Oh, it must have been about 7 o'clock.

15

Q And did you see Richard Forbrick up there?

16

A Yes; I did.

17

Q Did you have a conversation with Forbrick at that
time, Mr. Barnaba?

19

A Yes; I did.

20

Q Would you tell us, please, what was said?

21

A Well, I told him I can get it. He says to get
it and bring it up to the hospital.

23

Q You then returned to the social club?

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A I did.

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Q And did you see the defendant Inglese?

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Barnaba-direct

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A Yes.

Q Where did you see him?

A At the bar, having coffee.

Q Did you have a conversation?

A Yes.

Q What did you say?

A I told him I would take delivery on it, I wanted it. He told me to go down the block with my car and wait there, down the block on Wilkinson Avenue.

Q While you were in the club, did you see Joe Crow or Finnegan?

A I met Joe there for the first time.

Q Who introduced you to him?

A Gigi.

Q What if anything did he say when he introduced him to you?

A He says he's his partner, he's all right, he's his partner since they were kids.

Q Was Finnegan there on this occasion?

A I think he was.

Q did you then leave the club?

A Yes; I did.

Q Where did you go?

A I got in my car and went down the block and

pp3

Barnaba-direct

parked.

Q And what happened next?

A About 15 or 20 minutes later, Joe Crow and Finnegan come down in a black Cadillac convertible, '69 or '70, pulled alongside of me. I pulled my window down; Finnegan pulled his down and handed me the package.

Q Where was Joe Crow?

A Driving.

Q Finnegan was in what seat?

A The passenger's side.

Q Front or back?

A Front.

Q Finnegan handed you a package?

A Yes.

Q Can you describe the package?

A It was a brown paper bag.

Q Was it sealed or open?

A Well, it had tape around it, sealed.

Q When Finnegan handed you this brown paper bag, did he say anything?

A He says the coke was marked.

Q The coke was marked?

A Yes.

Q What did you do then?

pp4

Barnaba-direct

1 A I put it in my car, and I left.

2 Q Where did you go?

3 A Back to the veterinary hospital.

4 Q And when you got to the veterinary hospital,
5 what did you do?

6 A I pulled up in Richie's driveway.

7 Q Richie is Forbrick?

8 A Forbrick. And I rang the horn and called him,
9 and nobody came out. He was out. I took for granted he
10 might have been at Ben's house. So I got in my car and went
11 to Ben's house.

12 Q When you say you went to Ben's house, Ben whom?

13 A Tolopka.

14 Q Had you been to his house before that?

15 A I think so; yes, sir.

16 Q What location did you go to?

17 A Well, he lives on 233rd Street.

18 Q Well, about how far is that from the animal
19 hospital or the veterinary hospital?

20 A By car?

21 Q By car or by blocks.

22 A A couple of minutes.

23 Q About how many blocks would you put it?

24 A Well, it's near Harper Avenue, ten, maybe, the
25

1 pp5 Barnaba-direct

2 most.

3 Q Well, it's close to the hospital?

4 A Yes.

5 Q And when you got to the defendant Tolopka's
6 house, what if anything did you do?

7 A I got out of my car, and I went to his door,
8 and I rang the bell or knocked -- I don't remember. Anyway,
9 he came to the door, and I says, "Is Richie here?"
10 He says, "No." I says, "I got the coke for you."
11 He says, "Oh, you got it? Well, bring it in." He says,
12 "Get it." I said, "All right. I'll be right in."

13 I went back to the car, got in the car, opened
14 the bag and took out the package of coke and brought it
15 into his house.

16 Q Where was the package of heroin?

17 A I left it in the car.

18 Q And you went back to the defendant Tolopka's
19 house?

20 A Back in the house.

21 Q With the coke?

22 A Yes.

23 Q Is this the package that was marked?

24 A Yes.

25 Q And what happened then?

pp6

Barnaba-direct

A Well, he let me in and closed the door. He went down to the basement. I followed him down. When I got to the bottom of the stairs, I stopped, because in the corner I saw a colored guy standing there, near the table, and I didn't like the idea, you know, that the guy would see me. So he says, "Don't worry about it. He's all right." He told me his name.

DEFENDANT GAMBA: May I leave, your Honor?

My stomach --

DEFENDANT INGLESE: May I leave?

THE COURT: Mr. Inglese, sit down.

Mr. King, would you come up, please.

(Discussion at the bench, off the record.)

MR. CURRAN: Your Honor, might the reporter read the last part? I don't know if it is part of an answer or a question. Whatever was last stated, your Honor?

THE COURT: Surely.

(Answer read.)

Q Do you recall his name?

A No; I don't.

Q What happened then?

A Well, I handed him the package.

Q You handed whom the package?

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A Ben.

Q And --

A And he brought it over and put it on the scale. He had a scale on the table. He looked at it, took it off and dropped it on the table for the colored guy. He went in the package -- the colored guy went into the package and took out a bit and snorted some, put it in his nostrils, stood a while and said it was all right.

Q This was the unidentified man?

A Yes.

Q All right. What happened then?

A After that, Ben came over to me and says, "Okay." He says, "I'll give Richie the money tomorrow." I says, "Okay," and I left.

Q You left?

A Yes.

Q Where did you go then?

A I went back to Richie at the veterinary hospital.

Q Was Mr. Forbrick, or Richie, at the hospital when you returned to it?

A Yes. He was there then.

Q Did you have a conversation with him?

A Yes.

Q What did you say and what did he say?

pp8

Barnaba-direct

A I told him, "I was looking for you. Where were you?"

He said, "I had to take my wife shopping."

I said, "Well, I gave Ben the coke."

He says, "Oh, you gave it to him?"

I says, "Yes."

He says, "Okay. He'll give me the money tomorrow."

I says, "Yes; I know."

And I said, "I got the other package. What do you want me to do with it?"

He says, "Give it to me."

I gave it to him, and he put it in a metal shed he had near his house there.

Q You say a metal shed. Where was this with relation to the veterinary hospital?

A On the side near the stairs that he used to go up to his house.

Q Now, what happened next?

A Well, I left. I told him I would see him tomorrow, and I left.

Q Did you see him the next day?

A Yes; I did.

Q And where did you see Mr. Forbrick?

A At the veterinary hospital.

- 2 Q At about what time of day, do you recall?
- 3 A It was after 3.
- 4 Q In the afternoon?
- 5 A In the afternoon.
- 6 Q And at that time did you talk with him?
- 7 A Yes.
- 8 Q What did you say and what did he say?
- 9 A I asked if he had the money. He said, "Yes."
- 10 He gave me the money, and he asked me, "What do I have
- 11 to give you?"
- 12 Well, I said, "I want 500 for every quarter
- 13 I give you."
- 14 He said, "Okay."
- 15 Q Did he give you money for yourself right
- 16 there?
- 17 A No. Not right then, no.
- 18 Q How much money did he give you then?
- 19 A He gave me a bag which he says there was \$5
- 20 in it.
- 21 Q Did you count it then?
- 22 A No.
- 23 Q What did you do?
- 24 A I took it and brought it to the club and gave
- 25 it to Gigi.

mpa2

Barnaba-direct

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2

Q You say it was a brown paper bag?

3

A A brown paper bag, yes.

4

Q And did you see the money in the bag?

5

A Yes.

6

Q Can you tell us, please, the denominations of

7

bills as you noticed them?

8

A It was small bills, fives, tens, twenties.

9

Q When you say at the club, you are talking

10

about the club at Westchester and Wilkinson Avenue?

11

A Yes.

12

Q And did you see the defendant Inglese there?

13

A Yes.

14

Q Tell us what happened, if you please, Mr.

15

Barnaba?

16

A When I pulled up he was standing outside.

17

When he saw me he started to go into the club. I followed

18

him.. I had the bag in my hand.

19

Q It was the bag with the money?

20

A Yes. When I got inside he says, "Don't

21

come here with a bag showing like that. Try to hide

22

it next time."

23

Q Was anybody present besides the defendant

24

Inglese when he said this to you?

25

A I think Finnegan was there.

mpa3

Barnaba-direct

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Q What happened next?

A Then I left. I told him I didn't count it.
He says if anything is missing he will let me know.

Q Was anything else said at that time about
the future.

A Well, he said from then on I would have to
come up with front money.

Q Come up with front money?

A Yes.

Q What did that mean to you?

A Money in advance.

Q You mean you would have to pay before you got
the narcotics?

A Yes.

Q Did he give you any reason for this?

A Well, he says nobody was paying him when they
were supposed to be paying him.

Q And what, if anything, did you say?

A I said, "All right."

Q Now, directing your attention, Mr. Barnaba --

THE COURT: Mr. Curran, it's a little past
our usual breaking time. Is this a good point to
break?

MR. CURRAN: I think so, your Honor, yes.

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mpa4

Barnaba-direct

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THE COURT: All right, ladies and gentlemen of the jury, the marshal will escort you out. Everybody else will remain seated, please.

(The jury left the courtroom.)

THE COURT: All right, Marshal.

(The witness left the courtroom.)

THE COURT: The defendants are all excused now if you want to go. I understand there is going to be an application, Mr. Fisher.

MR. FISHER: If your Honor please, we would ask that one defendant remain, that is Mr. Inglese, because the government has an application which I spoke with Mrs. Rosner about with respect to him.

THE COURT: Let's take care of this first.

MR. PHILLIPS: I am sorry, your Honor. I will take that back. We were going to make that application tomorrow morning.

MRS. ROSNER: May I be excused?

THE COURT: Unless you want to get involved in the application by Mr. Fisher.

MRS. ROSNER: Mr. Fisher will represent my interests in this application.

(Pause.)

MR. DOWD: If your Honor please, could I

mpa5

1 approach the bench with Mr. Phillips and Mr. Curran,
2 off the record?
3

4 (Discussion at the bench, off the record.)

5 MR. PHILLIPS: Your Honor, before we get
6 to the tape matters, there are two things I want to take
7 up. First of all, I don't want to keep your Honor in
8 the dark, and I spoke to Mrs. Rosner with respect to the
9 application the government is going to make tomorrow morn-
10 ing, so at least you can focus upon the law in that area.
11 We intend to ask your Honor to direct Mr. Inglese to turn
12 over and give handwriting exemplars, specifically,
13 handprinted exemplars, and the area of law that the
14 government intends to rely on is the Supreme Court
15 case of United States v. Gilbert, decided in 1967, Second
16 Circuit cases; United States v. John Doe and United States v
17 Izzy.

18 Are those easily found, John Doe cases? There
19 must be --

20 MR. PHILLIPS: No, 405 F. 2d, your Honor.
21 I don't know the page number. There aren't many of them.

22 And in addition there is a Southern District
23 Court case that has been published by Judge Cooper,
24 U. S. v. Ignare, 307 F. Supp., I believe, and there are
25 other cases even in the Second Circuit.

1 mpa6

2 The other matter that the government would
3 ask your Honor to consider is the question of sitting on
4 Saturday if the cross examination of Mr. Barnaba hasn't
5 been completed by the end of tomorrow. Mr. Barnaba
6 will not mention Mr. Salley in any way, shape or form, and
7 we would ask your Honor, urge your Honor to sit on
8 Saturday to complete cross examination of Mr. Barnaba to
9 get this case moving, because we have not been sitting
10 the hours, the usual hours that your Honor has set
11 forth and in view of the fact that there is a sequestered
12 jury and your Honor did indicate that we would be
13 sitting the first Saturday --

14 THE COURT: All right. I will think about
15 it.

16 Mr. Fisher.

17 MR. FISHER: If your Honor please, on
18 behalf of all the defendants -- I believe I am authorized
19 to make the application in their behalf -- we would move
20 the court for an order directing the government to
21 produce Sergeant O'Boyle for the purpose of inquiring of
22 him under oath whether or not there are, No. 1, tape
23 recordings -- first of all, whether or not he was pre-
24 sent at interviews or debriefings of the witness John
25 Barnaba subsequent to 11/14/72, which I believe was the

1 mpa7

2 date of his arrest in this particular area, to and includ-
3 ing, the present.

4 In addition, if he was not present at such inter-
5 views but knows that they exist, whether or not there were
6 tape recordings made of these interviews or debriefings.

7 Third, whether or not the tapes are still
8 in existence if they were made.

9 Fourth, whether or not simultaneous notes and/or
10 memoranda were made of such interviews purporting to set
11 down in substance the conversations had in the interviews.

12 Further, whether or not, if not simultaneously,
13 some notes or memoranda were made at some point in time
14 purporting to set down the substance of Mr. Barnaba's
15 statements during the interviews and the questions, if any,
16 that were asked.

17 I believe that's it with regard to Mr. O'Boyle,
18 if your Honor please.

19 I have other applications.

20 MR. PHILLIPS: Your Honor, I believe Mr.
21 Fisher served a subpoena on Sergeant O'Boyle. That's
22 a matter essentially between Mr. Fisher and Sergeant
23 O'Boyle and the Police Department, and the only thing that
24 the government would hope and urge upon the court is that
25 any question as to Sergeant O'Boyle be taken up at

1 mpa8

2 luncheon recesses or at the close of the day in order not
3 to delay the jury's listening to the testimony of Mr.
4 Barnaba.

5 Mr. Fisher has already been assured by Mr.
6 Miller under oath that with respect to all the de-
7 briefings that took place of Mr. Barnaba that he was
8 present at and aware of there were no notes or memoranda
9 made, that the only debriefing tape is the tape that has
10 been turned over and has been designated A-274, debrief-
11 ing on November 14, 1972.

2 MR. FISHER: Your Honor, I should point out
3 that last night I spoke with Mr. Miller telephonically.
4 I asked him whether or not he had known of the Stasi de-
5 briefing tapes that were made by the agents and he in-
6 dicated to me that he did not know about them before they
7 in fact had been made. I think that is accurate.
8 If that is the case with regard to Stasi it is just as
9 likely that Mr. Miller is unaware of tape recordings made
10 of these interviews by the police agents.

11 Secondly, I do not object at all to having this
12 inquiry made during a luncheon recess, but I would ask
13 your Honor, the cooperation of the government in this
14 case. We attempted to serve Mr. O'Boyle at Mr. Rogers'
15 unit, whatever it is, and we are told he is not there.
16 Now, it is clear he is an active assistant in terms of
17 this prosecution. I don't think Mr. Phillips would
18 deny that. A mere telephone call on Mr. Phillips'
19 part would produce the gentleman. If we are just haggling
20 here over whether or not I have to go find him to sub-
21 poena him I think it is trivial.

22 THE COURT: If we are haggling over that we
23 are going to stop right now.

24 MR. PHILLIPS: I will have him produced, if
25 your Honor would so desire, 12:30 tomorrow, noontime.

1 THE COURT: I will be surprised. I don't
2
3 know. I want to think about this at some length.
4 I understand more fully now the issues that Mr. Fisher
5 is raising.

6 Go ahead. You say you have another.

7 MR. FISHER: Yes, if your Honor please.

8 THE COURT: Is this on behalf of everybody.

9 MR. FISHER: Yes, your Honor. Referring
10 now, if your Honor please, to the Court's Exhibit 55
11 for identification, which is a list apparently of tape
12 recordings -- has your Honor a copy?

13 THE COURT: No.

14 MR. FISHER: You will note, if your Honor
15 please, and I hope the record will reflect that at the
16 top there are columns, date, persons involved, page -- page --
17 and tape number.

18 First of all, it has been represented that there
19 are no transcripts. It is curious that page numbers
20 are listed for nonexistent transcripts.

21 THE COURT: No, no. Page I am sure refers
22 to an index.

23 MR. FISHER: Is that correct, Mr. Phillips?

24 MR. PHILLIPS: The page I am 99 per cent
25 certain relates, your Honor, to the page number that

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appears in an overall file that is kept by the SIU, then
SIU, now MIF. It specifically would be kept, I imagine,
by Sergeant O'Boyle.

THE COURT: Isn't that an index? All right.
Go ahead.

MR. FISHER: That is certainly reassuring,
in any event, your Honor. If Mr. Boyle arrives we will
be able to clear that up.

Mr. Phillips stated to the court this morning
that someone in behalf of Mrs. Rosner, specifically,
Mr. Oppenheimer, saw Mr. Phillips some short time prior
to January 7, 1974 and asked Mr. Phillips for the
tapes and Mr. Phillips said that Mr. Oppenheimer asked
only for the debriefings and did not want any of the
other things.

Now, Mr. Oppenheimer is here. I have spoken
with Mr. Oppenheimer. Apparently that is not his recol-
lection. In fact, your Honor, his recollection is that
he asked Mr. Phillips for everything that Mrs. Rosner and
I were entitled to -- Mr. Oppenheimer was then acting in
my behalf, very kindly, as well -- and Mr. Phillips
indicated to him that there were certain tapes which
might be available as 3500 material or to other counsel,
but which Mr. Oppenheimer, as representing Mr. Donato Chris

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1271

2 tiano and Mr. Louis Inglese, could not get. In any
3 event, he did not limit his request to mere debriefings.

4 If your Honor please, I would like to read into
5 the record a list of the tapes that Mr. Oppenheimer in
6 our behalf received: R22M, R465A --

7 THE COURT: Do you really want to read this
8 into the record?

9 MR. FISHER: All right, your Honor. If the
10 court will permit, I will make a list myself tonight
11 and mark it.

12 THE COURT: At this point of the time I am
13 quite sure that you are as tired as I am.

14 MR. FISHER: Yes, your Honor, I am. In
15 any event, with regard to the tapes of Barnaba,
16 we got three, I believe. That number stands in sharp
17 contrast to a total of 37 tapes listed herein, 31 of
18 which are not circled.

19 Now, that means, I am advised by Mr. Phillips,
20 and I hope my recollection is correct, that the circled
21 ones are ones the government now says it is ready or has
22 been ready to turn over. Six out of 31 is a meager
23 proportion indeed, if your Honor please.

24 Mr. Phillips, however, has now stated that
25 he will make these tapes available to me and other counsel

right after we leave, and I am grateful for that. Nevertheless, whether there was a misunderstanding or something more serious, in any event, we have not had an opportunity to study these tapes. Study them? We haven't even listened to them, we haven't even had them transcribed.

I would ask at this point, your Honor, that after Mr. Barnaba's direct examination is concluded tomorrow, and more than likely I am only asking for an hour or an hour and a half continuance, that we adjourn for the day and that we resume Monday morning, at which time I hope all kinds of diligent efforts I know will have been made to prepare counsel to proceed as expeditiously as possible.

One final matter. Your Honor has reserved decision with respect to six of the tapes listed on this government's Exhibit 55, Court's Exhibit 55 for identification. I would ask your Honor when your Honor considers this again to -- may I just have one moment?

This is an unnecessary request. I am sure your Honor will consider the kind of cross examination that was conducted on Stasi.

THE COURT: Sure.

MR. FISHER: What kind of material could really

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2 be helpful to the defendants at this time?

3 THE COURT: Sure. In fact, the fact I
4 reserved decision means that I can't make a decision until
5 such time as Barnaba has testified.

6 MR. FISHER: Quite understandable. Might
7 I submit this, most respectfully: I think if there is
8 a close question an error to be made, I think the com-
9 pelling interests of justice in a situation where "the
10 cover has been blown on Mr. Barnzba" weigh mightily in
11 the favor of disclosure at this time. There is very
12 little about Barnaba or his activities that are not known
13 to the people involved.

14 THE COURT: All right. I appreciate that

15 MR. PHILLIPS: Your Honor, Rule 3500 does
16 not give defense counsel the broad right to have every-
17 thing that has ever been transcribed about any witness.
18 I think Rule 3500 has been expanded well beyond any limits
19 that Congress envisioned it in this trial.

20 To just clear the air for a minute with respect
21 to the prior history regarding these particular tapes,
22 I asked for and received in December some time
23 various tapes pertaining to Frank Stasi and John Barnaba.
24 The first day after the Christmas holidays or New Year's
25 holidays, January 2nd, that week, the only defense attorneys

1 jha
2 to contact me regarding the particular tapes that I had
3 mentioned at a pretrial discovery conference with all the
4 attorneys was Mr. Oppenheimer on behalf of Mrs. Posner
5 and I assume now Mr. Fisher and I told him about the de-
6 briefing tapes and about other tapes which the government
7 did not deem to be 3500 material, but that he was welcome
8 to listen to them if he wished, and he asked for the de-
9 briefing tapes so that he could make copies of them.

10 At that time I turned over to him debriefing
11 tapes of Mr. Pannirello, Mr. Stasi, Mr. Barnaba, and I
12 also turned over to him a tape wherein Mr. Inglese
13 himself appeared, which was a tape where Barnaba was act-
14 ing in an undercover capacity.

15 Thereafter, the only attorney that came down
16 and listened to some undercover tapes, specifically,
17 undercover tapes where Mr. Barnaba was wired or Al Cas-
18 sella, an undercover officer who is referred to in Court's
19 Exhibit 55 as undercover No. 30094, was Mrs. Everett on
20 behalf of Mr. Mamone, because Mrs. Everett is an associate
21 in Mr. Ellis' office, and she spent a great deal of time
22 in my office or an adjoining office listening to these
23 various undercover tapes which had been supplied to me
24 by the Police Department.

25 It was our position then, it is still our

position, that none of those tapes were and are 3500 material, and those tapes are circled in ink in Court's Exhibit 55.

I also turned over to Mr. Dowd, who represents Frank Russo, various tapes where his client appears, which are undercover tapes of Mr. Barnaba and also of Mr. Cassella.

I further turned over to a representative of Mr. Richman's office two tapes relating to conversations between John Barnaba and Mr. Tolopka. With respect to the latter, the Tolopka tapes, we submit that these are not 3500 material.

With respect to the Russo tapes, from a technical standpoint they would be regarded as 3500 material as to a government witness, Al Cassella, who will appear some time subsequent to Mr. Barnaba. These have already been turned over to Mr. Dowd. We have no intention of making transcripts of them, but we have no objection to Mr. Dowd making them available to other defense counsel, to have transcripts made, or to have copies of them made, for that matter. However, we do intend to call Mr. Cassella to testify regarding his negotiations with Mr. Russo and subsequent purchases of narcotics from Mr. Russo.

Now, Mr. Curran a couple of weeks ago requested of Frank Rogers that he make available all tapes where Barnaba appears if they in any way touch upon this case.

Mr. Rogers' office then made available other tapes which we supplied to your Honor's chambers and which your Honor has listened to and which have been sealed and which this afternoon we asked to have unsealed. Those are Court's Exhibits 42 through 46 and are designated also in Court's Exhibit 55 as M167, A322, M159, M244, M209.

Now, we submit again that these items are not 3500 material, which will be made clear by Mr. Barnaba's direct examination.

THE COURT: Do I have to listen to them again?

MR. PHILLIPS: No, your Honor. It will be made clear that they are not 3500 material by Mr. Barnaba's direct examination, which will not touch in any way upon his undercover operations after he was arrested in November of 1972.

Now, I understand, and I think Mr. Fisher said in court, that he has served a subpoena on Mrs. Posner has communicated with Mr. Rogers' office that she was going to serve a subpoena to produce all tapes relating to John Barnaba whatsoever. I can represent, having

2 spoken to Mr. Rogers' office over the luncheon recess,
3 that there are somewhere between 40 and 60 tapes that
4 John Barnaba appears on working in an undercover capacity
5 where he speaks with people such as John Werthheimer,
6 Nick Monaco, Frank Monaco, other people that are not in
7 this case, that he is not going to talk about in any way
8 on his direct examination.

9 Now, if defense counsel wish to subpoena those
10 tapes that is a matter between defense counsel and Mr.
11 Rogers' office. We have no objection to defense
12 counsel subpoenaing the tapes. We are not moving to
13 quash the subpoena. We are not objecting to them
14 listening to the tapes.

15 THE COURT: I am sure Mr. Rogers will.
16 I don't know. Maybe he won't.

17

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1 hpl
2 MR. PHILLIPS: I just want to point out that
3 this investigation, Mr. Barnaba going out wired up, was
4 not initiated or engaged in in any way by the United
5 States Government. It was a totally separate investiga-
6 tion.

7 What Mr. Barnaba is going to testify to on his
8 direct examination is his past dealings, that is, prior
9 to his arrest in November, 1972, with the defendants on
10 trial and certain co-conspirators.

11 We submit that the items which are sought both
12 in whatever subpoenas are served upon 'Mr. Rogers' office,
13 and, for that matter, those items that appear in Court's
14 Exhibit 55 for identification are not in any way, shape
15 or form 3500 material, for two reasons:

16 One, they do not relate to Barnaba's direct
17 examination, and, two, they are not within the custody,
18 control or possession of the United States Government.

19 MR. EPSTEIN: If your Honor will, may I just
20 have a moment?

21 THE COURT: You want to be heard too or do you
22 want to talk?

23 MR. EPSTEIN: I would like to address myself to
24 the Court.

25 THE COURT: All right.

1 hp2

2 MR. EPSTEIN: Your Honor, very briefly, there
3 was a conference in this case on the 20th of December,
4 1973, out of the presence of the Court, concerning this
5 case, and during the course of that conference there was
6 a discussion concerning the tapes, not only the tapes of
7 the debriefing that had been conducted of the various
8 witnesses the government has produced here at trial, but
9 also concerning the tapes allegedly made while these
10 individuals were out on the street working in an "under-
11 cover capacity."

12 I indicated during the course of that conference
13 and in a subsequent conversation I had with Mr. Phillips
14 out in the hall after the conference was concluded that
15 it was the position of the defendant Tramunti that he was
16 entitled to have these tapes made available to him so that
17 he might listen to these tapes and make the determination
18 in his own behalf as to whether or not these tapes contain
19 any exculpatory material that might be of value to Mr.
20 Tramunti in presenting his defense. Quite obviously we
21 are talking about tapes that were made during the course
22 of time that is covered by the period set forth in this
23 indictment.

24 Mr. Phillips indicated to me at that time the
25 tapes would be made available after the first of the year.

1 hp3

2 He indicated to me, however, that it was his position that
3 certain of these tapes were not discoverable.

4 I indicated to Mr. Phillips that I would speak
5 to him in the future concerning this matter and I did
6 get back to him by phone a few days later. In the
7 course of the conversation he indicated to me the tapes
8 would be available on January 2nd, which was a Wednesday,
9 and that certain tapes he was not prepared to turn over.

10 I indicated if that was the government's position
11 that it was my intention to have a conference before the
12 Court to appraise the Court of the position of the
13 defendant Tramunti, have the government explain its
14 position to the Court, and have the Court rule at that time
15 concerning whether or not these tapes should be made
16 available to the defendant Tramunti in order to allow him
17 to prepare his defense.

18 On January 2nd I was again in touch with Mr.
19 Phillips by phone. Mr. Phillips at that time informed
20 me that Mr. Oppenheimer had been in the office, he had
21 picked up the tapes on behalf of Mrs. Rosner and Mr.
22 Fisher, and that he, Mr. Phillips, had turned over all
23 the tapes to Mr. Oppenheimer and that Mr. Oppenheimer
24 was now in charge of having the tapes reproduced and I
25 should get in touch with Mr. Oppenheimer, which I then,

1 hp4

2 of course, proceeded to do. Mr. Oppenheimer had the tapes
3 reproduced and copies were at that time made available to
4 the defendant Tramunti.

5 I had no idea, indeed, I had no idea until
6 this trial was well under way, that in the discussion
7 of the tapes involving the defendant Barnaba there were
8 some 20 or more tapes -- and I emphasize the words "or
9 more" -- tapes made by the defendant Barnaba while he
10 was in an undercover capacity out on the street that
11 were in existence but were presently unavailable to the
12 defense.

13 At this time it's the request of the defendant
14 Tramunti that these tapes be made available to him before
15 he is required to go forward with his own defense in this
16 case.

17 MR. FISHER: Your Honor, I don't think --

18 MR. PHILLIPS: The thing I don't understand
19 is how, when one defense counsel came down to my office
20 and spent a whole week listening to the tapes, they can
21 say that they didn't have access to the tapes.

22 MR. FISHER: Your Honor, I don't think we are
23 fighting about much. Mr. Phillips is not now resisting
24 letting us listen to the tapes. Whether or not they are
25 3500 material is not important to me, as long as I can

1 hp5

2 listen to them, and Mr. Phillips said I can.

3 With regard to the subpoena, frankly, your
4 Honor, I think you are going to get a surprise. I
5 think they might not object to the subpoena.

6 MR. PHILLIPS: You are talking about Mr.
7 Rogers' office.

8 MR. FISHER: Yes.

9 MR. DOWD: Your Honor, I have a problem now,
10 thanks to Mr. Phillips.

11 Mr. Phillips -- I just picked up the tail end
12 of his statement -- I think stated that some time after
13 Mr. Barnaba testifies Detective Cassella will get on the
14 stand and testify to his dealings with my client, Mr.
15 Russo, in respect to the negotiations for the purchase of
16 and the purchase of heroin.

17 Did I hear correctly, Mr. Phillips?

18 MR. PHILLIPS: Yes.

19 MR. DOWD: All right. Now, I have repeatedly
20 asked for information about whether the government would
21 offer evidence in this respect and I think I owe it to the
22 Court to advise you at this time, first now being made
23 aware of this, that there are several problems which I
24 think the Court should be made aware of.

25 No. 1, the government intends not to offer any

1 hp6
2 direct testimony by Mr. Barnaba, yet Mr. Barnaba was
3 wearing a Kel transmitter in all the instances when Mr.
4 Cassella was present.

5 No. 2, there is a Sixth Amendment question
6 in respect to Mr. Barnaba acting as an undercover agent
7 in that he did engage me in conversation subsequent to
8 my client's indictment in the State Court on exactly the
9 same charges and talked to me about the defense of the
10 case. I think there is a necessity for a hearing on
11 that issue.

12 Also, your Honor, in respect to this matter,
13 at the beginning of the case, prior to the case, during
14 the motion to suppress, Mr. Phillips moved and was granted
15 a motion for a severance of a substantive count relating
16 to a sale of heroin on January 10, 1973. Now I am
17 being placed in the position of having to defend a
18 conspiracy charge involving a sale of heroin on January 10,
19 1973, and then being faced with a later trial of the
20 substantive count dealing with the same sale which has
21 been severed from this case.

22 I say that the prior severance causes a surprise
23 necessarily on my part. I am not in a position, I don't
24 think, to adequately defend it, and I could state for the
25 record why, because there were certain aspects of my

1 hp7

2 defense which required witnesses who are out of the country
3 who I don't know if I could get right now and I would have
4 known four weeks ago or had a more reasonable opportunity
5 to do so.

6 MR. PHILLIPS: The basis for the government
7 severing the substantive count charging Russo with a sale
8 on January 10 is because he is also charged in the State
9 Court with the same sale and we do not want to cause any
10 double jeopardy problems regarding the prosecution in
11 the State. We cite People vs. Cirillo, just decided in
12 December of 1973, with respect to the question of double
13 jeopardy in narcotics cases first being prosecuted in
14 the Federal Court, later in the State Court.

15 With respect to whether Mr. Dowd should be
16 surprised, he was given the chemists' reports, copies of
17 the chemists' reports, regarding the analysis of the
18 narcotics that were sold by Mr. Russo to Mr. Cassella.
19 The government never represented to Mr. Dowd it was not
20 going to put in evidence of the January 10th sale to Mr.
21 Cassella on the conspiracy count.

22 MR. DOWD: Your Honor, I don't think I said that
23 the government represented to me that they were not going
24 to prove that. I received the chemists' reports prior
25 to the motion for a severance and based on the severance

1 hp3

2 I think a reading of the Cirillo case, if that is the
3 Second Department case in New York State, indicates that
4 a prosecution for a conspiracy where the overt acts proved
5 are a sale of heroin would bar a prosecution in the State
6 on an actual sale and possession charge. So there is no
7 question as far as that is concerned.

8 What I am concerned about is in the Federal
9 Court, my problem of being prosecuted for conspiracy and
10 then prosecuted for the very same thing on a substantive
11 charge at a later date. I think it's patently unfair.
12 If I had been advised of the facts --

13 THE COURT: I will worry about that at a later
14 date, if that ever happens.

15 MR. SIEGEL: Your Honor, I have an application.

16 THE COURT: What is your application?

17 MR. SIEGEL: Your Honor, my problem is this:
18 approximately 20 minutes ago I was advised that there is
19 a transcript of a Barnaba tape which has recently been
20 prepared and I have every indication to believe that
21 another transcript is being prepared.

22 I am under the impression that these materials
23 have been turned over to the government, and if that be
24 the case, as assigned counsel, I would make an application
25 on behalf of myself and the rest of the assigned counsel

1 hp9

2 that there be a transcript provided of these tapes.

3 THE COURT: Are you talking about having the
4 government Xerox the transcripts?

5 MR. SIEGEL: That's correct, your Honor.

6 THE COURT: I thought they were doing it.

7 MR. PHILLIPS: We intend to Xerox it. It
8 hasn't been given to us yet, your Honor, the transcript.

9 THE COURT: If you don't have it, you can't
10 Xerox it.

11 MR. PHILLIPS: We intend to Xerox it as we did
12 with the other transcripts, both for assigned counsel and
13 retained counsel.

14 MR. SIEGEL: Do you have any idea when this
15 will come into your possession, Mr. Phillips?

16 MR. PHILLIPS: We haven't gotten it yet.

17 THE COURT: All right. Court is adjourned.

18 (Adjourned to February 8, 1974, at 10.00 a.m.)
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WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Pedirect</u>	<u>Recross</u>
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Jack Fasanello	1134	1164		
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EXHIBIT INDEX

<u>Government</u>	<u>Identification</u>	<u>In Evidence</u>
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<u>Court</u>		
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